BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.10.2020

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THE HONOURABLE **MR.JUSTICE G.R.SWAMINATHAN**

W.P.(MD)No.11100 of 2020
and W.M.P.(MD)No.9720 of 2020

M.Lakshmi ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Assistant Commissioner(CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai-630 561. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33395401516/2011-12 dated 02.05.2017 and quash the same.

For Petitioner : Mr.Raja Karthikeyan

For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

ORDER

Heard the learned counsel appearing on either side.

2.The writ petitioner is a road contractor. She is registered with the second respondent. The subject matter pertains to assessment year 2011-12. The petitioner reports total turn over of Rs.50,89,835/- and taxable turn over of Rs.9,16,188/-. The petitioner had submitted her returns, accordingly and the same was passed on deemed assessment basis on 31.10.2012 under Section 22(2) of the Tamil Nadu Value Added Tax Act. The petitioner's returns were accepted. While so, in May 2017, the impugned revision of assessment order was served. The petitioner states that she was not served with any prior notice before passing the impugned order. But then, without going into the said issue, the challenge made in this writ petition can be dealt with.

3.The respondents have filed counter affidavit and learned SGP reiterated the contentions set out therein. In paragraph 7 of the counter affidavit, it has been mentioned that certain details originally escaped the notice of the Authority and that based on the available data, the impugned order has been passed.

4.The question is whether such course of action is open to the second respondent herein. A mere look on the impugned order would indicate that the impugned order came to be passed only on further scrutiny of the assessment records. In other words, no new materials were discovered and the records, already furnished by the petitioner, were subjected to further scrutiny and on that basis the impugned order has been passed. It has been consistently held that re-opening of assessment by change of opinion is impermissible. The petitioner's counsel has enclosed the common order dated 20.12.2018 made in W.P.(MD)Nos.16874 of 2018 etc., in the typed-set of papers.

5.For the reasons set out therein, I hold that the re-assessment proceedings are not permissible on mere change of opinion of the Statutory Authority at the subsequent stage. In this view of the matter, the order impugned in this writ petition is quashed. The petitioner appears to have made some payment towards compliance of the terms imposed by this Court. The respondents can adjust the same towards other liabilities of the petitioner. The writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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W.P.(MD)No.11100 of 2020
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TR(16.10.2020) 3P 3C