In the High Court of Judicature at Madras

Dated : 10.3.2021

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Ms.Justice R.N.MANJULA

Writ Appeal No.785 of 2021 and CMP.No.4169 of 2021

M/s.Udhayam Agro, rep.by
its Proprietor M.Maha Kumar ...Appellant/Petitioner

Vs

The Deputy Commercial Tax Officer
(Main), Thiruthuraipoondi
Assessment Circle, Thiruthuraipoondi,
Tiruvarur District. ...Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 03.12.2020 made in W.P.No.1931 of 2016.

W.P.No.1931/2016: Prayer:-
Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the Respondent in TIN No.3363382267/2013-2014 dated 14/07/2015 and quash the same as illegal, arbitrary, against the provisions of the Act and against the principles of natural justice.

For Appellant : Mr.K.Soundara Rajan
For Respondent : Mrs.G.Dhanamadhri, GA(T)

Judgment was delivered by T.S.SIVAGNANAM,J

We have elaborately heard Mr.K.Soundara Rajan, learned counsel for the appellant and Mrs.G.Dhanamadhri, learned Government Advocate(Taxes) accepting notice for the respondent.

2. The writ appeal, filed by the dealer, is directed against the order dated 03.12.2020 made in W.P.No.1931 of 2016.

3. In the said writ petition, the appellant challenged the revised assessment order under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (for short, the Act) for the year 2013-14. The main ground, on which, the revised assessment order was challenged, was on the basis that the revision had been done solely based upon the extract from the official website of the other end dealer. The second ground raised by the appellant was that the pre-revision notice dated 12.6.2015 was never served on the appellant.

4. A counter was filed by the respondent in the said writ petition stating that the pre-revision notice was sent by registered post with acknowledgment due and it was duly served.

5. The said writ petition was pending from the year 2016 and the appellant also had the benefit of interim order of stay. When the matter was finally heard, it was dismissed on the ground of availability of an alternate remedy.

6. We had an occasion to consider a similar issue in the case of Mahindra & Mahindra Ltd. Vs. Joint Commissioner (CT) (Appeals) [W.A.No.493 of 2021 dated 18.2.2021] and gave reasons as to under what circumstances, the availability of alternate remedy will not be an absolute bar to exercise jurisdiction under Article 226 of The Constitution of India.

7. We find in the instant case that there has been violation of the principles of natural justice and the revision of assessment has been done solely based upon the mismatch found in the returns filed by the appellant and the other end dealer.

8. An identical issue was considered by one of us (TSSJ) while sitting singly in the case of JKM Graphics Solutions Pvt. Ltd. Vs. Commercial Tax Officer, Vepery Assessment Circle [reported in (2017) 99 VST 343] and the matter had been remanded to the Department for verification. We are now informed that the Department has evolved a machinery, by which, reconciliation of the difference would be done at the first instance by the Department themselves and when the issue is not reconcilable, then a notice would be issued to the dealer.

9. Considering all these facts, we are of the view that one more opportunity can be granted to the appellant to go before the Assessing Officer to file their objections and thereafter, the Assessing Officer shall do necessary verification in terms of the circular issued by the Principal Commissioner and Commissioner of Commercial Taxes as to how to deal with cases where there is a 'mismatch'.

10. Accordingly, the writ appeal is allowed and the impugned order is set aside. The writ petition is also allowed and the

matter is remanded to the respondent for a fresh consideration. The appellant is directed to submit their objections by treating the assessment order dated 14.7.2015 as a show cause notice and place all the relevant records. Thereafter, the respondent shall proceed in accordance with law. Till fresh orders are passed, no coercive action shall be initiated against the appellant. No costs. Consequently, the connected CMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

RS

To

The Deputy Commercial Tax Officer (Main), Thiruthuraipoondi Assessment Circle, Thiruthuraipoondi, Tiruvarur District.

+1 cc to M/s.K.Soundarajan, Advocate Sr.No. 15616
+1 cc to The Government Pleader Sr.No. 15704

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CMP.No.4169 of 2021

AAB(CO)
RMP(19/04/2021)