IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.NO.12201 OF 2013
AND
M.P.NO.1 OF 2013

M/s.Kaleesuwari Refinery Private Limited,
Rep., by its Director,
No.53, Rajasekaran Street,
Mylapore, Chennai-600 004. .. Petitioner

-vs-

The Assistant Commissioner (CT)(FAC),
Washermenpet II Assessment Circle,
Chennai-600 081. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33391280956/2011-12 and quash the proceedings dated 08.04.2013 issued therein.

For Petitioner : Mr.R.L.Ramani,
Senior Counsel
assisted by
Mr.B.Raveendran

For Respondent : Mr.V.Nanmaran,
Government Advocate

ORDER

The lis on hand is filed questioning the legal validity of the notice dated 08.04.2013 issued for provisional assessment with reference to the assessment year 2011-12.

2.The petitioner is engaged in the manufacture of edible oil and is registered on the files of the respondent under the provisions of the Tamil Nadu Valude Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act").

3.The facts in detail deserve no adjudication in view of the fact that the learned Senior Counsel appearing on behalf of the petitioner solicited the attention of this Court with reference to the settled legal proposition regarding passing of a provisional assessment order, after the last date of a particular year. In the present case, the process of provisional assessment is undertaken by issuing the impugned notice in proceedings dated 08.04.2013 and the last date for the assessment year 2011-12 was 31.03.2012. Thus, the notice itself is invalid and without jurisdiction.

4.It is brought to the notice of this Court that though notice was issued by the respondent in proceedings dated 08.04.2013, without even receiving the objections and explanations from the writ petitioner, a demand is raised in the said impugned notice. Thus, the respondent has pre-determined the issues, formed an opinion and determined the tax payable by the petitioner, which is in contravention to the provisions of the statute and thus, the order passed has no legal sanctity in the eye of law.

5.A writ against a show cause notice is not entertainable in a routine manner. A writ petition needs to be entertained only if, the notice is issued by an incompetent authority or without jurisdiction or an allegation of malafides is raised. In the present case, the impugned notice has been allegedly issued by the respondent without any jurisdiction. Thus, the writ is entertainable. The grounds raised in the present writ petition are no more res integra, as the Hon'ble Division Bench of this Court in the case of HMM Ltd. vs. Deputy Commercial Tax Officer, Chengalpattu reported in [(1990) 79 STC 421, ruled as follows:-

> "9.We therefore hold that the impugned order made in TNGST No.180826/89-90 dated 28th April, 1990 is vitiated by errors of law apparent on the face of facts and liable to be quashed. We also accept the contention of the learned counsel for the petitioner and the ratio of Mahendrakumar Ishwarlal and Company vs. Deputy Commercial Tax Officer [1971] 28 STC 551 (Mad.) that it is not open to the Revenue to pass a provisional order of assessment after the end of the assessment year. Therefore, there is no point in directing the petitioners to seek the statutory remedies available under the Act. Accordingly, the writ petition is allowed and the impugned order is quashed and there will be no order as to costs."

6.The legal proposition contemplated in the aforementioned judgment was subsequently followed by the Hon'ble First Bench of this Court in the case of M/s.Jothi Melters (India) Pvt. Ltd.

vs. Commercial Tax Officer [W.A.Nos.1412 & 1413 of 2009, dated 14.10.2009]. Paragraph 4 of the said judgment reads as follows:-

> "4.Mr.R.L.Ramani, learned Senior Counsel appearing for the appellant has drawn our attention to the judgment of a Division Bench of this Court in State of Tamil Nadu vs. Wander Limited reported in (1990) 79 STC 421 (Mad.) which in turn, in paragraph 9 refers to another Division Bench judgment in Mahendrakumar Ishwarlal and Company vs. Deputy Commercial Tax Officer reported in (1971) 28 STC 551 (Mad.) to the effect that it is not open to the Revenue to pass a provisional order of assessment after the end of the assessment year."

7.The fact remains that the proposal for provisional assessment was undertaken by the respondent with reference to the assessment year 2012-13 and the last date for the said assessment year was 31.03.2013 and admittedly, the impugned notice was issued on 08.04.2013 and thus, the legal principles, as settled in the aforementioned judgments, would be squarely applicable in respect of the writ petition on hand.

Accordingly, the impugned notice passed by the respondent in proceedings dated 08.04.2013, is quashed and the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT)(FAC),
Washermenpet II Assessment Circle,
Chennai-600 081.

+1cc to Mr.B.Raveendran, Advocate, S.R.No.32313
+1cc to the Special Government Pleader, S.R.No.32683

W.P.No.12201 of 2013

SR-II(CO)
CS/12/08/2021