

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2021

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM
and
The Honourable Ms.Justice R.N.MANJULA

W.A.No.913 of 2021
and
C.M.P.No.5385 of 2021

S.R.Paramasivam ...Appellant/Petitioner

Vs

The Commercial Tax Officer,
Harur Assessment Circle,
Harur. ...Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent to set aside the order dated 01.12.2020 passed in W.P.No.19219 of 2015 and M.P.Nos.1 and 2 of 2015.

Prayer in W.P.No.19219 of 2015: Writ Petition filed under Article 226 of the Constitution of India, calling for the records of the impugned proceeding of the Respondent in TIN No.33673342634/2011-12 dated 19.01.2015, quash the same as illegal and against the provisions of the Act.

For Appellant: Mr.R.Senniappan

For Respondent: Ms.G.Dhanamadhri, GA

JUDGMENT

(Delivered by T.S.Sivagnanam,J)

We have heard Mr.R.Senniappan, learned counsel for the appellant and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2. This writ appeal by the writ petitioner is directed against the order dated 01.12.2020 made in W.P.No.19219 of 2015. The said writ petition was filed by the appellant challenging the assessment order mainly on the ground that it is in

violation of principles of natural justice in as much as the Assessing Officer did not look into the accounts, which were produced by the appellant.

3. The appellant is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The assessment for the year 2011-12 was taken up for scrutiny under Section 22(3) of the Act and a show cause notice dated 08.12.2014 was issued alleging that there has been sale of cement bags lesser than the purchase price. The Assessing Officer alleged that only with a view to show profit account, they have sold the cement bags in lesser price. Further, the Assessing Officer stated that the appellant has sold the cement bags in a price lesser than the purchase price except discount and the sale consideration, which includes the amount of discount, is also liable to be taxed.

4. The appellant submitted his reply dated 06.01.2015 along with a statement showing 7 transactions to demonstrate that the sale price was higher than the purchase price. The appellant requested the Assessing Officer to consider all the factors mentioned in the reply and drop the proposal of making assessment of tax at different rates on the amount of Rs.7,03,237/- received as discount from the sellers for the year 2011-12. The appellant produced the accounts, purchase bills and sale bills for the year 2011-12. It appears that the appellant did not seek for an opportunity of personal hearing and therefore, the Assessing Officer did not afford such an opportunity.

5. The Assessing Officer rejected the reply filed by the appellant by holding that there was no opening and closing stock of goods and all the goods were purchased as sold out during the assessment year. Further, the Trading, Profit and Loss Account disclosed gross loss and had the dealer sold all the goods purchased with a marginal increase in sale price over the purchase price, then the Trading Account would reflect a different picture with a gross profit. Further, the Assessing Officer observed that he need not again call for the appellant's accounts to segregate the purchase bills and the sale bills, wherein the sale price was found to be less than the purchase price. After making such an observation, the Assessing Officer further stated that, probably, if the bills are examined, except the 7 purchase and sale bills, all other bills would reveal that the sale price quoted by the appellant was lesser than the purchase price.

6. The question would be whether such a presumption could have been drawn by the Assessing Officer.

7. Thus, the Assessing Officer, as proposed in the show cause notice, concluded that the amount of discount received certainly form part of the sale consideration and completed the assessment vide order dated 19.01.2015.

8. At the time when the writ petition was entertained, an order of interim stay was granted. The writ petition was pending before this Court for nearly 5 years and the Department did not file their counter affidavit. When the matter was heard during December, 2020, the Court rejected the same on the ground of availability of alternate remedy.

9. We have, in several decisions, held that the refusal to exercise extraordinary jurisdiction under Article 226 of the Constitution of India when a statutory alternate remedy is available under the Act is a self-imposed restriction and there are exceptions carved out from this self-imposed rule. One such exception, which has been held by the Court to be a justifiable reason to exercise writ jurisdiction, is when the writ petition is pending for a considerable length of time before a Court and it would be too harsh on the party to be driven to avail the alternate remedy after few years.

10. We are of the view that the case on hand will fall within the said exception. The Assessing Officer cannot state that he need not call for other bills and even it is called for, except for the 7 bills, which were purchased by the appellant, all other bills will reflect lower sale price than the purchase price. This may not be a right approach while completing the assessment for the purpose of levying tax. The Assessing Officer has to come to a definite conclusion, especially, when it is a scrutiny assessment and the dealer has cooperated in the scrutiny by filing their reply and submitting the documents available with them. Had it be a case of best judgment assessment, the situation would have been different, which is not so in the case on hand.

11. Therefore, in our considered view, the matter has to be sent back to the Assessing Officer to redo the assessment after affording an opportunity to the appellant/dealer.

12. In the result, the writ appeal is allowed and the matter is remanded to the respondent-Assessing Officer for a fresh consideration. The appellant/dealer is directed to treat the assessment order dated 19.01.2015 as a show cause notice and

submit their objections along with a copy of the earlier objections dated 06.01.2015 and copies of all records available with them and submit the same to the respondent within a period of 2 weeks from the date of receipt of a copy of this judgment. On receipt of the same, the respondent shall afford an opportunity of personal hearing and cause necessary verification of the records produced and redo the assessment in accordance with law and pass a speaking order as expeditiously as possible, preferably within a period of 60 days from the date on which the personal hearing is concluded. As the appellant had the benefit of interim stay for nearly 5 years during the pendency of the writ petition, till final orders are passed, in terms of the above directions, the Assessing Officer shall not initiate any coercive action against the appellant/dealer. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

hvk

To

The Commercial Tax Officer,
Harur Assessment Circle,
Harur.

+1cc to Mr.R.Senniappan, Advocate SR.No.20228

+1cc to Special Government Pleader (Taxes) SR.No.20029

W.A.No.913 of 2021

and

C.M.P.No.5385 of 2021

GPL (CO)
GMY (16/04/2021)

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