IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 25.08.2021

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.17492 of 2021
&
W.M.P.No.18584 of 2021

Sankara Traders
Represented by its Proprietor
Saurabh Munot
64/1, Bazaar Street
Chimdambaram - 608 001 ...Petitioner

Vs.

The Commercial Tax Officer (ST)
(State Tax Officer)
Chidambaram-1 ...Respondent

Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records on the files of the respondent herein in TIN-33774442559/2014-15 dated 7.7.2021 quashing the same with the direction to furnish Xerox copies of D-7 records referred to in the impugned order along with the opportunity of being heard.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.T.N.C.Kaushik
Government Advocate

ORDER

Read this in conjunction with and in continuation of earlier proceedings made on 23.08.2021 in the captioned main writ petition and 'Writ Miscellaneous Petitions' ('WMPs' in plural and 'WMP' in singular for the sake of brevity, convenience and clarity) therein, which reads as follows:

> 'Mr.T.N.C.Kaushik, learned State counsel accepts notice on behalf of sole respondent.
>
> 2. List in the motion list day-after-tomorrow i.e,. 25.08.2021.'

2. Learned Revenue counsel says, he has since obtained instructions. This Virtual Court with the consent of learned counsel for writ petitioner Mr.N.Inbarajan and learned Revenue counsel Mr.T.N.C.Kaushik, takes up the main writ petition as the entire matter turns on a very narrow compass.

3. Short facts shorn of elaboration will suffice. Short facts are that the writ petitioner is an authorized distributor of wet and dry X-Ray films and that writ petitioner is registered under 'Tamil Nadu Value Added Tax Act, 2006' ('TNVAT Act' for the sake of brevity) and there was deemed assessment; that the enforcement wing of respondent Department recovered D-7 forms resulting in assessment under Section 27 of TNVAT Act on the ground that it is assessment of escaped turn over; that the order made under Section 27 of TNVAT Act has been called in question inter alia on the ground that Narasus principle being ratio in Tvl.Narasus Roller Flour Mills Vs. The Commercial Tax Officer (Enforcement Wing), Sankagiri reported in 2015 81 VST 560 which inturn was made by following an earlier Hon'ble Division Bench judgment in Madras Granites Private Limited Vs. CTO., reported in 146 CTC Page No.642 has been given a go by; that it is to be noted that this principle is to the effect that the Assessing Authority exercising best judgment assessment qua alleged escaped assessment should not go solely / blindly by the report of the Enforcement Wing officials and should independently make an assessment.

4. As already alluded to supra, the entire matter turns on a very narrow compass as two orders made by this Court [one by me and another by Hon'ble Justice Dr.Anita Sumanth] in Ponny Stores Vs. The State Tax Officer (dated 22.07.2019) and Gayathri Agency Vs. Assistant Commissioner (ST) (dated 24.02.2021) respectively, under similar circumstances are directly and squarely applicable to the case on hand. This Court is informed without any disputation or disagreement that aforesaid two orders in Ponny Stores and Gayathri Agency cases have not been carried in appeal by way of intra-court appeals and they have been given quietus. This Court is also informed without any disputation or disagreement that the orders and directives therein have since been complied with.

5. Therefore, on the short point of Madras Granite and Narasus principles infraction, captioned writ petition is disposed of by passing the following order:

a) The impugned Assessment order dated 7.7.2021 bearing reference TIN-33774442559/2014-15 is set aside;

b) The impugned Assessment Order is set aside solely on the ground of infraction of Narasus and Madras granite principles (not making the assessment independent of the Enforcement Wing report) without expressing any view or opinion on the other aspects of the matter;

c) The respondent shall furnish photocopies of the D-7 records referred to in the impugned order to the writ petitioner under due acknowledgement on or before 15.09.2021.

d) Post furnishing the aforementioned photocopies i.e., post 15.09.2021, Respondent shall make the assessment afresh independent of the proposals given by the Enforcement Wing in tune with Madras Granite / Narasus principle.

e) The assessment afresh shall be made on its own merits and in accordance with law.

f) The aforesaid exercise of assessment afresh shall be completed as expeditiously as the business of the respondent would permit, but in any event within two months from 15.09.2021 i.e., on or before 15.11.2021.

Writ petition is disposed of on above terms. Consequently, WMP is also closed. There shall be no order as to costs.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

gpa

To
The Commercial Tax Officer (ST)
(State Tax Officer)
Chidambaram-1

+1 CC to Mr.N.Inbarajan, Advocate sr 42821
+1 CC to The Special Government Pleader(T) sr 43137.

W.P.No.17492 of 2021&
W.M.P.No.18584 of 2021

GPL(CO)
SP(09/09/2021)