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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.3297 of 2014

Commissioner of Income Tax,
Central - VII,
No.121, Uthamar Gandhi Salai,
Chennai - 600 034. ...Petitioner

Vs

1. Income Tax Settlement Commission,
640, Anna Salai, Nandanam,
Chennai - 600 035.

2. G.Rajam Chetty & Sons,
28B, West Raja Street,
Kancheepuram - 631 501. ... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari, calling for the records on the file of the first respondent in TN/CN.8/2012-13/4/IT dated 26.07.2013 and quash the same so far as the same is against revenue as illegal and beyond jurisdiction and authority of the first respondent.

For Petitioner : Mr.Prabhumukunth Arunkumar

For Respondent : R1 - No appearance
R2 - Mr.Raghav menon
For Mr.R.Sivaraman

O R D E R

The order passed by the first respondent / Settlement Commission in proceedings dated 26.07.2013 is under challenge in the present writ petition.

2. The learned counsel appearing on behalf of the writ petitioner made a submission that based on certain incorrect facts, an error crept in, in the order passed by the first respondent / Settlement Commission. In this regard, the petitioner has stated that the first respondent erred in holding that the second respondent / assessee's contention was acceptable based on the verification of Revenue, wherein, CIT

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(DR) accepted that the customer gold weighing 14499.40 gms. was wrongly shown as second respondent's own gold. It is contended that the first respondent has failed to see the verification report clearly, which shows that in the absence of customer's signature in the delivery challan and in the absence of receipts issued by the second respondent for receipt of old gold from the customers, the authenticity of the claim was neither verifiable nor acceptable.

3. Citing these mistakes, the learned counsel for the petitioner reiterated that the order passed by the Settlement Commission is perverse as the findings cannot be construed as a Settlement. It is further contended that during the course of decision making, the first respondent has not considered the facts as pleaded and in fact, the facts plays are erroneously considered by the first respondent. The said facts are stated in Paragraph 5 of the affidavit filed in support of the writ petition, which reads as under:

> "5. It is submitted the Learned CIT (DR), who appeared for the revenue at no point of time accepted the above contention of the second respondent/assessee as observed by the first respondent herein. On the other hand, the Learned CIT (DR) based on the verification report dated 11.07.2013 filed by the petitioner as per the direction of the first respondent, had specifically pointed out that the contention of the petitioner that the customer gold weighing 14499.40 gms. was wrongly shown as second respondent's own gold is not correct. The relevant portion of the verification report is as under:
>
> "In view of the above, I am of the view that in the absence of customer's signature in the delivery challan, and in the absence of the receipts issued by the assessee to different customers from whom the assessee claimed to have received old gold, the authenticity of the receipt of old gold from the customers is not fully verifiable. Hence the assessee's claim is not acceptable."

4. Based on the mistake crept in, immunity was granted in favour of the second respondent. Thus, the petitioner is constrained to move the present writ petition.

5. The learned counsel for the second respondent opposed the said contention by stating that there is a delay of more than six months in filing the writ petition and further, the writ petition against an order of Settlement Commission is not maintainable. The learned counsel for the second respondent reiterated that the statement made by the Income Tax officials

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are taken into consideration by the Settlement Commission in a right perspective and immunity was granted. Thus, there is no infirmity or perversity as such and instead of filing a clarification petition under the Provisions of the Income Tax Act, the petitioner has chosen to file the present writ petition and thus, the writ petition is liable to be rejected.

6. This Court is of the considered opinion that the delay of about six months in filing a writ petition by the petitioner / Department cannot be considered as enormous, so as to reject the writ petition at the threshold. The ground raised in the writ petition is that based on certain incorrect facts and details, immunity was granted in favour of the second respondent, which caused prejudice to the interest of the Revenue. Thus, the petitioner has chosen to file the present writ petition as such mistakes crept in cannot be rectified by filing a clarification petition. However, this Court cannot adjudicate the disputed facts in the present writ proceedings as the adjudication was made before the Settlement Commission in the presence of the parties. What is transpired and the manner in which the facts recorded and the errors identifiable is the findings, to be considered by the Settlement Commission itself.

7. Under these circumstances, this Court is of an opinion that the case on hand is a fit case for remand and the grounds raised in the writ petition is to be considered by the Settlement Commission for the purpose of consideration and passing fresh orders.

8. In this view of the matter, the order impugned passed by the first respondent in proceedings in TN/CN.8/2012-13/4/IT dated 26.07.2013 is quashed and the matter is remitted back to the first respondent for fresh consideration. The petitioner is permitted to submit their objections / documents or evidences before the first respondent and the second respondent is also permitted to submit their explanations / objections and documents and the first respondent shall adjudicate the issues on merits and in accordance with law and by affording opportunity to all the parties and dispose of the matter as expeditiously as possible.

9. With these observations, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

The Income Tax Settlement Commission,
640, Anna Salai, Nandanam,
Chennai - 600 035.

+1cc to Mr.Hema Muralikrishnan, Advocate, S.R.No.39895

W.P.No.3297 of 2014

KSM(CO)
CT/01/09/2021