IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On	01.02.2021
Pronounced On	27.05.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.29156 of 2018
and
W.M.P.Nos.34089 & 34090 of 2018

(Through Video Conferencing)

M/s.Adhithya Polymers,
Rep. by its Partner
Mr.N.Dhuraiswami,
No.55/1-A, Anthiyur Road,
Parranchavadi,
Ammapettai Post,
Erode District. ... Petitioner

Vs.

The State Tax Officer,
Bhavani Assessment Circle,
Bhavani, Erode District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the respondent in TIN No.33873225445/2013-2014 dated 30.06.2018 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.M.Hariharan, A.G.P.

O R D E R

This is the second round of Writ Petition filed by the petitioner in respect of the same Assessment Year. Earlier, the petitioner had suffered an adverse order dated 29.09.2016 which came to be passed under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. Therefore, the taxable turnover of the petitioner was proposed to be re-determined based on the information gathered by the respondent from the website of the Commercial Tax Department. To this end, earlier, a notice dated 09.08.2016 was issued to the petitioner under Section 27 of the said Act.

2. As per the said revision notice, the petitioner had declared a purchase turnover of Rs.2,00,41,262/- in its returns, whereas, as per the information gathered from the web report, the petitioner had purchased goods worth Rs.3,05,55,027/-.

3. It was therefore proposed to re-determine the purchase and the sales turnover to demand a sum of Rs.5,88,771/- as the differential tax payable by the petitioner which had escaped assessment and an equal amount of penalty under Section 27(3)(ii) of the Tamil Nadu Value Added Tax Act, 2006. Thus, the first revision order dated 29.09.2016 came to be passed by the respondent.

4. The petitioner challenged the same before this court in W.P.No.7286 of 2017. The said writ petition was disposed by an order dated 24.03.2017 with the following observation:-

> 6. The learned Additional Government Pleader (Tax) is not disputing the fact that the issue involved in this case is covered by the above decision of this Court. Therefore he submitted that the same order can be passed in this case as well. In the said order, the learned Judge had observed in paragraph 56, 57 and 58 as follows:-
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> > 56.The procedure adopted under the Maharastra VAT Act appears to be a more reasonable procedure, the Rules have been so designed to constitute independent authorities, who will in exercise jurisdiction to dispose of the objections etc. However, this Court cannot legislate nor direct the State to legislate in a particular passion and it is for the state to bring about and appropriate rules and set procedures so that when discrepancy is noted while comparing the return with that of the figures available with the Department in their web portal, there should be an exercise carried out by the department within its level before calling upon the dealer to show cause. This can be achieved only if there is a centralised mechanism and if the present practice is allowed to prevail, it would only result in multiplicity of proceedings with more number of cases pending before the Courts and Appellate forums, thus jeopardizing the interest of revenue. Therefore, it is high time the Principal Secretary and Commissioner of Commercial Taxes in consultation with him officers lays out a

detailed procedure as to how to take forward cases of mismatch, evolve a central mechanism, which can go into these aspect and furnish details in full form to the respective Assessing Officers, who can decide for themselves as to whether there is a case made out to call upon their dealer to explain. If this centralized mechanism is not put in place exclusively for such purpose, it would result in notices and orders being issued by the respective Assessing Officers without even the knowledge of the Assessing Officer of the other end dealer resultantly no action being taken against other end dealer, assuming, he is at fault. Therefore, it is high time the Department wakes up and stops the one way approach and examine the matter in a holistic manner so that the defaulting dealer is brought to books.

57. Hence, for all the above reasons, all the Writ Petitions are allowed and the notices/orders either original or appellate or revisional are set aside and the matters are remanded to the respective Assessing Officers, to undertake a fresh exercise by conducting a thorough enquiry in consultation with the Assessing Officers of the other end dealer for which purpose the Commissioner of Commercial Taxes shall empower the Assessing Officers to seek information from other circles as well and in the mean time to evolve a centralized mechanism to exclusively deal with the cases of mismatch and while doing so, the Principal Commissioner shall take note of the procedures adopted by the other States, more particularly, in Maharastra, Gujarat and Delhi and if any statutory amendments have to be made, make appropriate recommendations to the State Government, and till then to devise a procedure which is fair and reasonable and afford an opportunity to the dealer to putforth his case and establish that he is entitled to the concession/set-off availed.

58. Since these Writ Petitions have been allowed and the impugned orders have been set aside and the matters have been remanded for fresh consideration the petitioners/ dealers are not entitled to raise the plea of limitation, when fresh show cause notices

> are issued and they are directed to submit their explanation to enable the Assessing Officers to adjudicate their case. The Court places on record the valuable assistance of Ms.R.Charulatha Advocate of M/s. Lakshmikumaran and Sridharan Attorneys. consequently, connected miscellaneous petitions are closed. No costs.

> 7. Considering the fact that the issue involved in this case is covered by the above decision made by this Court and considering the fact that the petitioner is also entitled for similar relief in this case, this writ petition is allowed and the impugned order of assessment is set aside. Consequently, the matter is remitted back to the Assessing Authority to redo the assessment after following the procedures/ directions issued by this Court in the above said batch of cases. Needless to say that the Assessing Authority will also provide an opportunity of personal hearing to the petitioner before finalizing the assessment. Such exercise shall be done by the Assessing Authority within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed

5. Under these circumstances, a fresh Revision Notice dated 26.02.2018 was issued to the petitioner. The petitioner replied to the same. The aforesaid proceeding has culminated in the impugned order dated 30.06.2018. By the impugned order, the taxable turnover was pre-determined and a tax of Rs.8,40,338/- has been confirmed on the petitioner and a penalty of Rs.8,40,338/-.

6. The impugned order further states that the petitioner has paid a sum of Rs.1,00,000/- on 18.06.2018 and therefore, the petitioner was required to pay a balance amount of Rs.7,40,338/- being the differential tax payable and penalty of Rs.8,40,338/-.

7. The petitioner has challenged this order on the ground that the impugned order has been passed by the respondent without discharging the burden of proof for reopening the assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. It is submitted that the assessment based on the details in website was not a valid ground for reopening the assessment.

8. During the course of the proceedings before the respondent, the petitioner has admitted that there were

certain omissions because their factory was shifted during 2013-2014 from one circle to another circle and that the partner of the petitioner who appeared during the personal hearing stated that the omission occurred due to the loss of the documents during transit and undertook to pay the differential tax.

9. It was further submitted that the mistake was not committed wilfully and they have agreed to pay the escaped tax noticed in the revision notice dated 26.02.2018. It is in this background, the impugned order has been passed in revising the assessment on admissions of the petitioner’s partner.

10. The respondent has stated that the writ petition is not maintainable and is devoid of merits. Several submissions were made on merits dealing with the manner in which the tax amount was determined.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

12. This Writ Petition has been filed as if this Court was sitting as an Appellate Commissioner under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The respondent has also contested the same vigour. This court is really not concerned with the correctness or otherwise of the decision but only with the decision-making process. On merits, it is best left open to the petitioner to challenge the same before the Appellate Authority or before the Original Authority if the situation so warrants.

13. A learned Single Judge of this court in JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, (2017) 99 VST 343 has taken note of provisions of the Maharashtra Value Added Tax Act and the rules made thereunder and had exhorted the Commercial Tax Department to follow the aforesaid mechanism to deal with the issue relating to mismatch between the turnover declared in the returns by an assessee and the turnover noticed in the website of the Commercial Tax Department. It was submitted that though, a Review Petition was filed before the learned Single Judge to review the aforesaid decision, a centralised mechanism has been devised by the Government, but it is yet to be implemented.

14. Copy of the centralised mechanism devised by the Commercial Tax Department is not available. It also appears that the Revision Petition has been recently dismissed. However, considering the fact that there is an admission of liability regarding suppression of sales turnover by the partner of the petitioner during a personal hearing before the respondent, I am of the view that there is no case made out for interfering with the impugned order.

15. In fact, but for the issue of first revision notice on 09.08.2016 to the petitioner based on the web report, the factum of suppression in the purchase turnover and the sales turnover would not have come to light. Therefore, there are no merits in this Writ Petition.

16. Therefore, while dismissing this Writ Petition, I am inclined to allow the petitioner to file a statutory appeal before the Appellate Authority within a period of thirty days from date of receipt of a copy of this order. If such appeal is filed by the petitioner before the Appellate Authority subject to compliance of other statutory requirements regarding filing of the appeal including that of the pre-deposit of disputed tax, such Appellate Authority shall dispose the appeal on merits in accordance with law within a period of ninety days from the date of receipt of a copy of this order.

17. Needless to state, while passing such orders, the Appellate Authority shall also consider whether the centralised mechanism which has been devised by the Commercial Tax Department is applicable to the facts and circumstances of the petitioner’s case.

18. This Writ Petition stands dismissed with the above observation. No cost. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

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To
The State Tax Officer,
Bhavani Assessment Circle,
Bhavani, Erode District.

W.P.No.29156 of 2018 and
W.M.P.Nos.34089 & 34090 of 2018

CP (CO)
RLP (12.07.2021)