BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **04.08.2021**
CORAM
THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.(MD)No.23954 of 2019
and
W.M.P(MD).No.20569 of 2019

(Through video conference)

M/s.Sri Vengadajalapathy Traders,
Rep. by its Proprietor R.Sureshkumar .. Petitioner

-Vs-

The Deputy Commercial Tax Officer(CT),
Karur (East) Assessment Circle,
Commercial Tax Building,
Karur. .. Respondent

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, Calling for the records in TIN.33393767260/2012-13, dated 10-07-2015 and TIN.No.33393767260/2012-13 dated 10-03-2016 issued by the respondent and quash the both as arbitrary, illegal, without jurisdiction, clear violation of the circular issued by the Special Commissioner and Commissioner of Commercial Taxes vide Acts Cell-VI/13234/2001 dated 20-04-2001 and direct the respondent to pass a assessment order afresh after considering the records filed by the petitioner including the opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Suresh Kumar
Government Advocate

ORDER

Prayer sought for herein is for a Writ of Certiorarified Mandamus, Calling for the records in TIN.33393767260/2012-13, dated 10-07-2015 and TIN.No.33393767260/2012-13 dated 10-03-2016 issued by the respondent and quash the both, as it is a clear violation of the circular issued by the Special Commissioner and Commissioner of Commercial Taxes vide Acts Cell-VI/13234/2001 dated 20-04-2001 and direct the respondent to pass an assessment order afresh after considering the records filed by the petitioner including the opportunity of personal hearing within a time frame.

2. The petitioner is the dealer registered under the respondent in TIN. No.33393767260.

3. For the assessment year 2012-2013, it is the case of the petitioner that since the total turnover is less than Rs.10,00,000/- as per the Rules 7(7) of the Rules made under the Tamil Nadu Value Added Tax Act, 2006(hereinafter referred to as "the Act"), annual return had been filed by the petitioner. In this context, the petitioner had filed an acknowledgment given in this regard by the respondent, wherein, the assessing authority has received the annual return filed by the petitioner on 08.05.2013.

4. However, without considering the said return filed by the petitioner, the respondent, as if that the petitioner had not filed any return, had proceeded to make an assessment wrongly under Section 25(1) of the Act, whereby, an order has been passed on 10.07.2015, where the respondent has imposed penalty under Section 25 besides the tax due demanded. As against the said order, dated 10.07.2015, since the petitioner felt that the said order was passed apparently on the basis of mistake of facts or error apparent on the face of the records, he had filed a petition to rectify it, by invoking Section 84 of the Act on 19.01.2016. Considering the said application of the petitioner dated 19.01.2016 under Section 84 of the Act, the respondent had passed a revised order on 10.03.2016, which is nothing but a rectification order under Section 84 of the Act, wherein also, there has been no whisper, according to the petitioner, to state that the petitioner has filed return and the same having been considered the present order has been passed, therefore, challenging both these orders, the petitioner has filed this writ petition with the aforesaid prayer.

5. Mr.S.Karunakar, learned counsel appearing for the petitioner has pointed out that, when return was filed for the assessment year concerned on 08.05.2013, which was personally acknowledged, and an acknowledgement to that effect has been given by the Assistant Commissioner, Karur (East), Karur, the assessing authority, based on such return, either it should have been accepted by the said respondent or if at all any difference is found in the said return, notice would have been given to the petitioner and without resorting to any of such procedure, as if the petitioner has not filed any return, the respondent proceeded to pass an order under Section 25(1) of the Act on 10.07.2015, thus that itself is a basic wrong, as under Section 25(1), order ought not to have been passed.

6. When this has been pointed out by the petitioner by filing an application under Section 84 of the Act on 19.01.2016, again, the respondent has only changed the provisions of law, that is, instead of Section 25(1), he made it as Section 22(4) and even in the said order dated 10.03.2016, which has now been passed under Section 84 of the Act, the respondent has not stated as to the return submitted by the petitioner. Therefore, the respondent ought not to have passed this order either under Section 25(1) or under Section 22(4) of the Act, because those provisions cannot be invoked for the case like this where the petitioner/dealer has submitted the annual return under Rule 7(7) in time and the same has been accepted and acknowledged by the respondent, and the present impugned orders ought not to have been passed and therefore, on that point, the learned counsel for the petitioner seeks indulgence of this Court to set aside those orders.

7. However, on the contrary Mr.R.Suresh Kumar, learned Government Advocate appearing for the respondent, on instructions, would submit that, in fact, the petitioner tried to have filed annual return on the basis that his turnover is not above Rs.10,00,000/-(Rupees Ten lakhs only).

8. However, the fact remains that during the relevant period, ie., assessment year 2012-2013, large quantity of iron and steel had been purchased and those purchases effected from the registered dealers had been effected for Rs.24,61,031/- (Rupees Twenty four lakhs sixty one thousand and thirty one only) and these transactions had not been reported in the monthly returns, which ought to have been filed by the petitioner. Therefore, it can very well be taken as purchase omission, hence, liable to be taxed under Section 3(2) of the Act.

9. In this context, the learned Government Advocate would further submit that, in order to catch the escaped tax in view of the absence of the monthly return being filed by the petitioner, notice under Section 22(4) of the Act had been issued to the petitioner, however, the petitioner has not responded to the same. Hence, order has been passed, ofcourse under wrong provision under Section 25(1) instead of 22(4) of the Act, but merely because a wrong provision has been quoted, the order of assessment passed on 10.07.2015 cannot said to be vitiated. The learned Government Advocate would further submit that, even that error has been rectified by the subsequent order made under Section 84 on 10.03.2016, where the provision has been changed into 22(4) instead of 25(1), therefore, that mistake also has been rectified. Hence, both the impugned orders, according to the learned counsel for the respondent, are tenable and acceptable, therefore, they do not require any interference from this Court, he contended.

10. I have heard the said rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

11. It is a definite case of the petitioner that a return has been filed for the concerned assessment year for which acknowledgement from the respondent also had been filed before this Court. The dispute now is whether the return filed by the petitioner is a monthly return or yearly return. But it is a case of the petitioner that it is an yearly return, because the transaction, according to the petitioner, is below Rs.10,00,000/-(Rupees Ten lakhs only), whereas it is a case, as unearthed by the respondent, that the transaction, that is, the purchase turnover exceeded Rs.10,00,000/-(Rupees Ten lakhs only), and it has been noticed as Rs.24,61,031/-(Rupees Twenty four lakhs sixty one thousand and thirty one only) during the relevant assessment year, therefore that omission can be treated as a purchase omission and therefore, in this context, Section 22(4) of the Act can very well be invoked. In this context, when notice was issued under Section 22(4) to proceed further, admittedly, the petitioner had not responded to the said notice, therefore, the respondent had proceeded further and to pass assessment order dated 10.07.2015.

12. However, in the said order, the provision has been wrongly quoted as Section 25(1) instead of Section 22(4) even that has also been rectified, ofcourse pursuant to the application submitted in this regard by the petitioner dated 19.01.2016, by the respondent through the order dated 10.03.2016 passed under Section 84 of the Act.

13. Therefore, if at all the petitioner still has got any grievance over the orders passed by the respondent both on 10.07.2015 and 10.03.2016, against both orders, the petitioner can either file an appeal under Section 51 of the Act or revision under Section 54 of the Act respectively, if he is advised to do so. Hence any such reason as alleged by the petitioner, that the respondent as if that have proceeded to issue these impugned orders by not taking into account the return submitted by the petitioner, is not available on records, therefore for the said reasons, the petitioner cannot have a successful challenge of the impugned orders before this Court.

14. In that view of the matter this writ petition fails, hence it is dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

To

The Deputy Commercial Tax Officer(CT),
Karur (East) Assessment Circle,
Commercial Tax Building,
Karur.

+1 CC to M/s.GP (SR-25378[F] dated 05/08/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-25304[F] dated 05/08/2021)

W.P.(MD)No.23954 of 2019
04.08.2021

RK (25.08.2021) 5P 4C