BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.03.2022
CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.4531 of 2019
and
W.M.P.(MD) No.3613 of 2019

M.Nagarajan,
Proprietor : Maganth Ventures,
No.78, Nehruji Nagar,
80, Feet Road,
Dindigul. .. Petitioner

Versus

The Assistant Commissioner (ST) – I,
Dindigul. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records on the file of the respondent in TNGST : 5201371/2005-06, dated 30.11.2018, and quash the same as illegal, invalid and violative of principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.J.K.Jeyaseelan
Government Advocate

ORDER

The petitioner has challenged the impugned assessment order dated 30.11.2018, whereby the respondent has come to the conclusion that there was a suppression of sales turn over by the petitioner and therefore, the petitioner was liable to pay tax of Rs.2,77,450/-; surcharge of Rs.13,872/-; and penalty of Rs.2,18,491/-.

2.The impugned order dated 30.11.2018 for the assessment year 2005-2006 is challenged primarily on the ground that pre-assessment notice dated 28.04.2017 issued to the petitioner for the assessment year 2005-2006, was based on an inspection conducted at the petitioner's premises on 18.10.2016 and based on an internal communication between the respondent and the Enforcement Wing from the Office of the Tamil Nadu Minerals Limited [hereinafter referred to as ''TAMIN''].

3.It is the submission of the petitioner that he had just started excavating the land for granite during 2005-2006 and had paid seigniorage fee for 48.39 Cubic Metres. It is submitted that the petitioner was unable to sell the product in the open market and hence, he attempted to sell the same through middlemen. Since the turn over was below 10 lakhs, the petitioner did not obtain VAT registration immediately.

4.It is submitted that the respondent has relied upon the letter dated 17.12.2016 of the TAMIN to conclude that the price per cubic feet was Rs.20,774/- and therefore, the value of granite blocks excavated by the petitioner was Rs.10,05,254/- to which 15% was added towards conversion and freight and accordingly, the actual suppress turn over has been arrived at Rs.11,56,042/-.

5.The learned counsel for the petitioner submits that despite the fact that the petitioner asked for these details and requested the respondent to cross-examine the Officer of the TAMIN, who gave the letter to the respondent, the respondent has proceeded to pass the impugned order.

6.Opposing the prayer, the learned Government Advocate for the respondent submits that the petitioner has indulged in large scale evasion of tax inasmuch as even for the period when the petitioner was not having registration, he has generated invoice with the TIN Number though he obtained registration only after 11.07.2007. It is therefore submitted that the petitioner has not maintained proper accounts and therefore, as such, the impugned order is sustainable. It is further submitted that the petitioner has an alternate remedy before the Appellate Deputy Commissioner (ST) (North), Madurai, and therefore, the Writ Petition is liable to be dismissed.

7.It is further submitted that the impugned order is dated 30.11.2018, whereas, the Writ Petition has been filed by the petitioner only on 28.02.2019. It is therefore submitted that the Writ Petition may be dismissed on latches and the petitioner may be relegated to work out the remedy before the Deputy Appellate Commissioner.

8.I have considered the arguments advanced by the learned counsel for the petitioner and the learned Government Advocate for the respondent and perused the impugned order, notices preceding the impugned order and the counter affidavit filed by the respondent.

9.There is no dispute that the petitioner has excavated 48.39 cubic meters of granite during the period in dispute. During the assessment year 2005-2006, the respondent has arrived at the value of excavated granite at Rs.20,774/- per cubic feet, based on a letter of the Divisional Manager of TAMIN dated 17.12.2016. The petitioner is entitled to have a copy of the aforesaid letter before the taxable value was determined by the respondent. It is open for the petitioner to get a suitable certificate from a Geologist regarding the value of the granite sold by the petitioner during the above said period. Neither the respondent has furnished the copy of the letter dated 17.12.2016 to the petitioner, nor the petitioner has made an attempt to bring any evidence to dislodge the presumption in the notice and to disprove the claim of the respondent. The truth lies in between which has not been determined by the petitioner and also not determined by the respondent.

10.Considering the above, I am inclined to remit the case back to the respondent to pass a speaking order within a period of 90 days from the date of receipt of a copy of this order. The respondent is directed to furnish a copy of the letter dated 17.12.2016 to the petitioner. The petitioner is also entitled to produce collateral evidence to show that the value of the granite that was excavated by the petitioner during 2005-2006 was not as per the letter dated 17.12.2016 of the Divisional Manager of TAMIN. The respondent is directed to furnish a copy of the letter of the Divisional Manager of TAMIN to the petitioner within a period of 30 days from the date of receipt of a copy of this order. The petitioner is directed to give a reply to the proceedings along with supplementary evidence that may be available with him to the respondent. The respondent shall pass appropriate orders on merits and in accordance with law within a period of 30 days thereafter. It is made clear that the entire exercise shall be completed within a period of 90 days from the date of receipt of a copy of this order. It is also made clear that the respondent is entitled to rely on the information that might not have been come to their notice, including the letters issued by the statutory authority giving the value. However, the petitioner cannot have a right to cross-examine the officers. Independently, the petitioner can produce as the collateral evidence to show that the value given by the Divisional Manager of TAMIN was incorrect.

11.This Writ Petition is disposed of with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST) – I,
Dindigul.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-12792[F] dated 17/03/2022)

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RK(01/04/2022) 4P 3C