BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.13431 of 2020
and
W.M.P(MD).No.11203 of 2020

Tvl.Kamal Enterprises,
Represented by its Proprietor,
Gowtham Chand Surana ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (CT),
Rockfort Assessment Circle,
Commercial Taxes Complex,
Contonement,
Trichy-620 001. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN/33543580501/2012-2013, dated 27.06.2020 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order passed by the 2nd Respondent, dated 27.06.2020 for the Assessment year 2012-2013.

2. The Petitioner is engaged in the business of sales of chewing tobacco and general consumer products like face powder, pain balms, chocolates, shaving blades etc. The Petitioner is an assessee registered on the files of the 2nd Respondent. There was an inspection, which was conducted in the place of the Petitioner's business premises on 09.12.2014. During the course of inspection, the following defects were noticed:

(a) The verification of bank statement reveals that a sum of Rs.4,84,41,094/-(Rupees Four Crores Eighty Four Lakhs Forty One Thousand and Ninety Four only) has been credited to the account of the Petitioner, whereas, the sales statement in terms of the return only disclosed turn over of Rs.3,93,54,399/-(Rupees Three Crores Ninety Three Lakhs Fifty Four Thousand Three Hundred and Ninety Nine only). The difference of Rs.90,86,695/-(Rupees Ninety Lakhs Eighty Six Thousand Six Hundred and Ninety Five only) was treated as sales suppression and tax has been levied.

(b) Secondly, during the course of the inspection, stock difference/variations representing difference between sales turn over as per returns and trading and profit and loss account was found to an extent of Rs.70,12,326/-(Rupees Seventy Lakhs Twelve Thousand Three Hundred and Twenty Six only).

3. The Petitioner in response to the above proposal submitted his objections, wherein, it was explained that the difference in bank statement/ deposit and sales statement do not relate to actual transaction of sales of goods. Thus, any levy of tax is impermissible. However, the impugned order has been passed rejecting the above objections of the Petitioner stating that in the absence of any other business carried out by the Petitioner, the only inference that could be drawn was that the difference between the bank statement and sales statement represented sales turn over and thus liable to tax.

In so far as the stock variation is concerned, it was submitted that the variation of Rs.70,12,326/-(Rupees Seventy Lakhs Twelve Thousand Three Hundred and Twenty Six only) represented the difference between the sales turn over as per the returns and trading and profit and loss account. It was further submitted that the discrepancy was found out in the month of August

2013 itself and revised returns were also filed rectifying the same. If the revised return is taken into account, the stock variation would work out only to Rs.9,62,326/-(Rupees Nine Lakhs Sixty Two Thousand Three Hundred and Twenty Six only). The explanation with regard to stock variation is concerned, was rejected stating that the filing of the revised returns was an after thought and the documents were fabricated.

4. It is submitted by the learned counsel for the Petitioner that the impugned order has been passed on gross non-application of mind, particularly, insofar as the first aspect viz., the difference between the bank statement and the turn over report. In this regard, reference was made to the judgment of the hon'ble Supreme Court in the case of **Girdhari Lal Nannelal Vs The Sales Tax Commissioner** reported in **39 STC 30 SC**, wherein, it was held that for the purpose of levy of sales tax mere unexplained acquisition of money from un-disclosed sources may not be adequate and it is necessary for the Assessing Officer to show sources of money resulted from transactions liable to sales tax. The relevant portion is extracted below:

> *“7. The approach which may be permissible for imposing liability for payment of income-tax in respect of the unexplained acquisition of money may not hold good in sales tax cases. For the purpose of income-tax it may in appropriate cases be*

permissible to treat unexplained acquisition of money by the assessee to be the assessee's income from undisclosed sources and assess him as such. As against that, for the purpose of levy of sales tax it would be necessary not only to show that the source of money has not been explained but also to show the existence of some material to indicate that the acquisition of money by the assessee has resulted from transactions liable to sales tax and not from other sources. Further, whereas in a case like the present a credit entry in respect of Rs. 10,000 stands in the name of the wife of the partner, no presumption arises that the said amount represents the income of the firm and not of the partner or his wife. The fact that neither the assessee-firm nor its partner or his wife adduced satisfactory material to show the source of that money would not, in the absence of anything more, lead to the inference that the said sum represents the income of the firm accruing from undisclosed sale transactions. It was, in our opinion, necessary to produce more material in order to connect the amount of Rs. 10,000 with the income of the assessee-firm as a result of sales. In the absence of such material, the mere absence of explanation regarding the source of Rs. 10,000 would not justify the conclusion that the sum in dispute represents profits of the firm derived from undisclosed sales."

5. It was submitted that though the above judgment of the Hon'ble Supreme Court was brought to the notice of the learned Assessing Officer, the same has not been even dealt with by the Assessing Officer, which clearly shows gross non-application of mind. Insofar as the stock variation is concerned, it is submitted by the learned counsel for the Petitioner that the revised returns was submitted by the Petitioner voluntarily much prior to date of the inspection. However, the order of the Assessment is passed by stating that the response/reply and the documents submitted are an after thought and

fabricated. The assessment order does not give any reason to reject the submission/explanation offered and documents submitted by the Petitioner.

6. To the contrary, it is submitted by the learned Additional Government Pleader for the Respondents that the order of the assessment has been made after affording an opportunity to the Petitioner.

7. Heard the learned counsels for both the parties.

8. This Court finds that the order of the 2nd Respondent is liable to be set aside inasmuch as the entire assessment order was made on gross non-application of minds to the Petitioner's objection and despite the Petitioner making a specific reference to the judgment of the Hon'ble Supreme Court in the case of ***Girdhari Lal Nannelal*** cited supra, the 2nd Respondent has passed the assessment order, without even a reference to it. Insofar, as stock variation, the Petitioner's objections, revised returns and documents are rejected by merely stating that it is an after thought and fabricated without furnishing/supplying any reason in support thereof.

9. In view of the same, the impugned order, dated 27.06.2020 is set aside and the Respondents are directed to re-do the assessment keeping in mind the principles laid down in the case of ***Girdhari Lal Nannelal*** cited supra and also affording an opportunity to the Petitioner and after taking into account the Petitioner's submission and dealing with the same.

10. With the above direction, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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MOHAMMED SHAFFIQ, J.

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