IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.08.2024

CORAM

THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**
and
THE HONOURABLE **MR. JUSTICE G.ARUL MURUGAN**

WP.No.36646 of 2004 and
WMP.No.43980 of 2004

M/s.Plastic Sales Corporation
No.82, Mint Street
Chennai-600 079. ... Petitioner

Vs

1.The Tamil Nadu Sales Tax Appellate
Tribunal (Additional Bench)
rep. by its Secretary
City Civil Court Buildings
Chennai-600 104

2.The Appellate Assistant
Commissioner (CT) II, Kuralagam Annexe
Chennai

3.The Commercial Tax Officer
Peddunaickenpet (North) Assessment Circle
Chennai. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Certiorarified Mandamus calling for the records of the first respondent in S.T.A.No.1393/2001, quash the order dated 03.09.2003 made therein and further restore the order of the second respondent made in A.P.No.13/2000 dated 25.08.2000.

For Petitioner : Mr.M.Hariharan

For Respondents : Mr.G.Nanmaran
Special Government Pleader

O R D E R

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

The premises of the petitioner, a dealer under the Tamil Nadu General Sales Tax Act, 1959 (in short 'Act') was subject to an inspection under the relevant provisions of the Act. The date of inspection is unknown and does not feature in the records before us.

2.Suffice it to say that in the course of the inspection, various discrepancies were noticed in regard to the maintenance of primary documents, as well as in the bills and vouchers relating to the transactions engaged in by the petitioner. An assessment came to be framed on 30.03.1998 adverse to the petitioner which was challenged before the first Appellate Authority. The primary contention of the petitioner in appeal was that the adverse assessment, framed on the basis of slip No.23 (in short 'slip'), was contrary to law and the principles of natural justice and a copy of the slip had not been supplied to the petitioner.

3.That apart, the petitioner also argued that there had been no verification of the accounts with reference to the slip. The order of assessment dated 30.03.1998 was set aside and the matter remanded by appellate proceedings dated 25.11.1998. It is hence that a second order of assessment dated 30.09.1999 was passed, where the officer had addressed the issue de novo.

4.A pre-assessment notice had been issued in response to which the petitioner had, for the first time, produced a stock book relating to the year in question. The Assessing Authority undertook a comparison of the entries in the stock book with D7 records that revealed various discrepancies in relation to the entries in the stock book. In summary, the entries did not tally with the D7/inspection records.

5.The Assessing Authority thereafter called upon the petitioner to produce primary details such as purchase and sales bills to support the entries in the stock book produced before him. As such details were unavailable with the petitioner, the authority records the finding that the day book, cash book, expense receipts and ledgers of receipts and expenditure were not produced for his perusal.

6.To be noted that the production of stock book only at the stage of remand is itself an aberration as such primary evidences were not found at the time of inspection. Despite this, the Assessing Authority has made an attempt to afford proper opportunity to the petitioner which was not utilized, evidently for the reason that the material sought for was unavailable with the petitioner. His conclusion was thus that the entries in the stock book had been manipulated since there is no correlation between those entries and the inspection records. This conclusion is, in our view, unimpeachable.

7.An appeal was filed by the petitioner before the first Appellate Authority challenging the assessment and the Authority undertook once again a reconciliation of the entries in the stock book. Mysteriously, he finds that all the entries in the stock book related to one slip that had been recovered in the inspection. How he arrives at this conclusion at paragraph 5 of the order, is unknown as no records have been produced by the assessee in this regard.

8.Moreover, the authority has admitted for his consideration, purchase and sales bills at the stage of first Appeal and on the basis of the same, accepts the appeal of the petitioner. The Tribunal reverses the aforesaid order at the instance of the revenue vide its order dated 03.09.2003, as against which the present writ petition has been filed.

9.The Tribunal has, and rightly, set aside the conclusion of the Appellate Assistant Commissioner on the ground that Section 39(B) of the Act which deals with production of accounts, does not permit the production of additional evidence before the Appellate Assistant Commissioner for the mere asking. It is incumbent upon the Authority to have recorded findings prior to admission of the new material.

10.In the present case, the first Appellate Authority has accepted purchase and sales bills that avowedly support the stock book, without recording any reasons. A perusal of his order does not indicate that any application was filed seeking permission for production of additional evidence. We thus agree with the conclusions of the Tribunal that the Appellate Assistant Commissioner grossly erred in admitting additional evidence without assigning any reasons justifying the same.

11.That apart, and very relevantly, all the evidences produced by the petitioner, being the stock book, sales and purchase bills, have been filed piecemeal only from the stage of remand. It is critical to note that that there were no supporting records or primary details found or produced by the assessee at the time of inspection. There has also been no justification put forth as to why the primary details were unavailable at the time of inspection and why they were not produced at least at the time of original assessment.

12.Only a stock book had been produced at the time of initial assessment, though the assessing authority had specifically sought sales and purchase bills.

13.The decision of this Court in *Madras Granites (P) Ltd. v. Commercial Tax Officer, Arisipalayam Circle, Salem and Another* [2006 146 STC 642 (MAD)] is distinguishable and does not further the case of the petitioner. The ratio laid down in that case was that an assessment should be made independently by an Assessing Authority without being influenced by the directions of superior authorities. That issue does not arise in this case.

14.On the basis of the discussion as above, and finding no merit in this writ petition, the impugned order of the Tribunal is sustained and this writ petition is dismissed. No costs. Connected miscellaneous petition is closed.

(A.S.M.,J) (G.A.M.,J)
12.08.2024

Index: Yes/No
Neutral Citation : Yes
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