IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.09.2016

CORAM

The Hon'ble Mr.Justice T.S.Sivagnanam

W.P.No.12218 of 2005
and
W.P.M.P.No.13360 of 2005

M/s. Ravi Cotton Company,
rep. by its Proprietor,
Mr.V.G.Ravichandran. ...Petitioner

Vs.

The Deputy Commercial Tax Officer,
Central – I, Assistant Circle,
Tiruppur.

... Respondent

Prayer :

Writ Petition, filed under Article 226 of the Constitution of India, praying for issuance of a writ of certiorarified mandamus, to call for records of the impugned proceedings of the respondent in TNGST Asst No.2400085/2002-2003, and to quash the impugned order, dated 28.02.2005, and further, to direct the respondent to grant copies of the records, requested by the petitioner, in their letter, dated 01.02.2005, and permit the petitioner to cross examine the persons from whom statements have been obtained by the respondent, and relied on for the purpose of assessment and thereafter, to complete the assessment in accordance with law in view of the direction of this Court in W.P.M.P.No.959 of 2005 of W.P.No.38521 of 2004, by an order, dated 07.01.2005.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner, and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of Tamil Nadu General Sales Tax Act, 1959, had challenged the order of assessment, dated 28.02.2005, for the assessment years 2002-03. Earlier, the petitioner came before this Court, by way of filing W.P.No.38521 of 2004, expressing grievance that the

Assessing Officer did not permit cross examination of witnesses, and therefore, the revised notice, dated 30.11.2004, has to be set aside. The said Writ Petition was disposed of, by order, dated 07.01.2005, issuing following direction:-

> "In view of the said submissions, I direct the respondents herein to furnish copies of the document required by the petitioner within a period of two weeks from today, and on receipt of the same, the petitioner is directed to submit their objections, if any, witnesses are examined by the respondents they are directed to give opportunity to the petitioner to cross examine them, and then, pass orders in accordance with law."

3. In terms of the above direction, the respondent was directed to furnish copies of the documents required by the petitioner within the stipulated time, and on receipt of the same, the petitioner was entitled to submit their objections, after which, the petitioner should be given opportunity to cross examine any of the witnesses, who are examined by the respondent. Once again, the petitioner has come before this Court, complaining that the order and direction issued by this Court, in the earlier

Writ Petition, has not been complained with, in its letter and spirit.

4. This Court perused the letter given by the petitioner to the respondent, dated 01.02.2005, in which, the petitioner has sought for copies of the following documents:-

"a) The Xerox copy of the application applied for registration certificate.

b) The statements gathered during the visit of the Assessment Circle's Officer for issuing R.C.

c) The xerox copy of the TNGST RC issued and the name of the Officer, who issued the same.

d) Xerox copy of ration card.

e) The name of the renewal fees collected by the Officer upto 2004-2005.

f) Copy of the properties, or deposits made by the traders of the following details:-

1) M/s. Rajeswari Traders
2) M/s.Jayakavitha Traders Enterprises
3) M/s.Sri Balaji Enterprises
4) M/s. Kannan Trading Company.
5) M/s.Alagar Perumal Textiles
6) M/s. Hanuman Traders
7) M/s. S.V.Balasubramanian Traders
8) M/s.Jayanthi Traders
9) M/s. S.Sivasubramanian Traders

10)M/s. Bakkiyalakshmi Traders
11)M/s. Swamy Trading Company."

5. The learned counsel appearing for the petitioner would submit that, except the document, mentioned in Serial No.b), i.e., the statements gathered by the Assessment Circle Officer, other documents have not been furnished to the petitioner. That apart, it is stated that no opportunity to cross examine the witnesses was granted.

6. In the impugned order, the respondent would state that all the documents, as directed to be furnished by this Court, in its order, dated 07.01.2005, passed in W.P.No.38521 of 2004, have been given to the petitioner on 25.01.2005 itself.

7. Thus, the only issue that needs to be examined is as to whether the petitioner had a fair opportunity to cross examine the witnesses before the impugned assessment order was passed, in the light of the earlier direction issued by this Court, in W.P.No.38521 of 2004, as it would bind the Assessing Officer.

8. From the letter given by the petitioner to the Assessing Officer, dated 01.02.2005, referred supra, it is seen that, apart from the statements gathered by the Assessment Circle Officer, the copy of which, has already been furnished to the petitioner, the petitioner has sought for other details, viz., i) xerox copy of the application and other details when they applied for registration certificate, ii) the name of the Officer, who issued the certificate, iii) xerox copy of the ration card, iv) name of the Officer, who collected the renewal fee., etc.,.

9. In my view, these documents are absolutely not germane to complete the assessment. That part, these are documents filed by other dealers and are kept on the file of the respondent, and he holds the same in fiduciary capacity. Therefore, the details thereunder, which are personal to the concerned dealer, cannot be compelled to be furnished to the petitioner, even as per the provisions of the Right to Information Act.

10. Therefore, this Court is of the view that the direction issued by this Court, in W.P.No.38521 of 2004, dated 07.01.2005, insofar it relates to furnishing of documents is concerned, the same has been complied with by the respondent, and the petitioner is not entitled for any more documents. However, the other limb of the direction issued by this Court, is with regard to giving an opportunity to the petitioner to cross examine the witnesses who are examined by the respondents. This, of course, has not been complied with. Therefore, to that extent, the petitioner is entitled to the grant of relief.

11. Accordingly, this Writ Petition is partly allowed, the impugned assessment is set aside solely for the reasons that opportunity to cross examine the witnesses has not been given, in respect of the persons from whom statements have been gathered, and the matter is remanded to the respondent for fresh consideration with the following directions:-

i) The respondent has furnished statement of several persons, who were examined by the Commercial Tax Officer, Pollachi (East) on 13.09.2004, 29.11.2004, 14.12.2004, etc.,. The petitioner is entitled to cross examine such of those persons, whose statements are proposed to be relied upon by the Assessing Officer while redoing the assessment. Accordingly, there will be a direction to the respondent to afford an opportunity of cross examination of such of those persons, whose statements, the respondent proposed to rely upon while redoing the assessment in terms of the above direction.

ii) The above direction shall be complied by the respondent, within a period of six weeks from the date of receipt of a copy of this order.

07.09.2016

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Index ; Yes/No

To

The Deputy Commercial Tax Officer,
Central – I, Assistant Circle,
Tiruppur.

T.S.Sivagnanam, J.,

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W.P.No.12218 of 2005

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