IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.16484 of 2015
and
M.P.No.1 of 2015

Tvl.Edelweiss Commodities Services Ltd.,
rep. by its Executive Vice President
M.Shankar Raaman
2nd Floor NO.70/108
Dr.Radha Krishnan Salai
Mylapore, Chennai-4 ... Petitioner

Vs

1. Commercial Tax Officer
Thiruvallikeni Assessment Circle
Taluk Office Building
3rd Floor No.46 Greenways Road
R.A.Puram Chennai-28

2. Joint Commissioner of Commercial Taxes
Chennai (East) Division
III Floor PAPJAM Building
No.1 Greams Road Chennai ... Respondents

Prayer: This Writ Petition under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified mandamus to call for the records on the file of the 2nd respondent made in its impugned proceedings herein R.P.No.57/2015/A10 (TIN/33850743129) dated 4.6.2015 and quash the same which is contrary to the provisions of the act and further direct the 2nd respondent to dispose the revision petition filed by the petitioner without insisting for payment of Tax and Security/Bank Guarantee for the penalty.

For petitioner : Mr.R.Sivaraman

For respondents : Mr.ANR.Jayapratap,
Government Advocate(T)

O R D E R

This writ petition has been filed for quashing the order of the 2nd respondent made in R.P.No.57/2015/A10 (TIN/33850743129) dated 4.6.2015 and to direct the 2nd respondent to dispose the revision petition filed by the petitioner without insisting for payment of Tax and penalty.

2. The petitioner, a registered Company under the Indian Companies Act, is carrying on business in Gold, Bullion and Silver and a registered dealer on the files of the 1st respondent in TIN33850743129/14-15. In the course of their business, the petitioner received a notice dated 05.02.2015, proposing to levy tax @ 1% and revise the assessment under Section 25 of the Tamil Nadu Value Added Tax Act, 2006. Though the petitioner filed their reply on 07.03.2015, the same was refused to be received by the respondent by contending that he had already finalised the order and confirmed the proposal by order dated 06.03.2015, without giving an opportunity to the petitioner. The assessment order dated 06.03.2015 passed by 1st respondent was challenged by way of revision petition under Section 54 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as 'TNVAT Act') before the 2nd respondent. Admittedly, the 2nd respondent numbered the revision petition in R.P.No.57 of 2015. But, by the impugned order, strangely, the 2nd respondent observed that while filing the revision petition, the dealer had not paid either the tax or penalty when there is no such pre-condition to entertain the revision under the Act. Such a stand taken by the 2nd respondent is impermissible in law, as decided by this Court in the case of Parshavanath Billion vs. Joint Commissioner (CT), Coimbatore and another reported in [2011] 44 VST 102 (Mad), wherein, this Court has categorically held as follows:-

> "5. While the first respondent has taken note of the substantive provision, the first respondent has not taken note of the proviso to section 54(4). In other words the payment of disputed tax is not made a pre-condition under section 54(4). There is a limited discretion vested in the first respondent which he is supposed to exercise in a manner known to law.
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> Therefore, the writ petition is allowed. The impugned order is set aside and the matter is remitted back to the first respondent for a fresh consideration. The first respondent shall consider the stay petition on the merits and pass

appropriate orders within a period of two weeks from the date of receipt of a copy of this order".

3. In view of the same, the impugned proceedings dated 04.06.2015 is quashed and the 2nd respondent is directed to dispose of R.P.No.57 of 2015 as expeditiously as possible, preferably, within a period of eight weeks from the date of receipt of a copy of this order, after affording due opportunity to the petitioner. It is made clear that if any recovery proceedings is initiated by the 1st respondent, it is open to the petitioner to file necessary stay application before the 2nd respondent, who shall consider the same and pass appropriate orders on merits.

The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Commercial Tax Officer
Thiruvallikeni Assessment Circle
Taluk Office Building
3rd Floor No.46 Greenways Road
R.A.Puram Chennai-28

2. The Joint Commissioner of Commercial Taxes
Chennai (East) Division
III Floor PAPJAM Building
No.1 Greams Road Chennai

+1cc to M/s.R.Sivaraman, Advocate, S.R.No.42673
+1cc to the Special Government Pleader(Taxes), S.R.No.41915

W.P.No.16484 of 2015

PPA(CO)
CA(25/08/2015)