IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.32385 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Alamu Pharma
represented by P.R.Alamelu
Proprietrix ... Petitioner

Vs

The Assistant Commissioner (CT)
Bazaar Circle, Salem. ...Respondent

Writ petition filed under 226 of the Constitution of India for the issuance of writ of Certiorari to call for the records on the files of the respondent in TIN: 33072781431/2014-15 (April-14 to February 2015) dated 02.09.2015 received on 07.09.2015 and quash the same as being invalid and illegal and contrary to law.

For Petitioner : Mr.C.Venkatraman
For Respondent : Mr.V.Haribabu, Spl. Govt. Pleader

ORDER

By consent, the writ petition itself is taken up for final disposal.

2.Challenging the provisional assessment made by the respondent in respect of the Assessment Year 2014-15 (April 2014 to February 2015), the petitioner has filed the present writ petition.

3.According to the petitioner, the petitioner is a registered dealer and is carrying on business in drugs, medicines and electronic goods. They filed their returns quantifying the total and taxable turnover for the assessment year 2014-2015. Thereafter, the respondent issued a revision notice dated 10.04.2015, proposing to determine the taxable sales turnover. On receipt of the same, the petitioner submitted their objection to the proposal on 21.08.2015. However, the respondent passed the provisional assessment order dated 02.09.2015, assessing the total and taxable turnover of the petitioner and also imposing penalty. Aggrieved against the same, the petitioner is before this Court.

4.The learned counsel for the petitioner submitted that Section 25 of the Tamil Nadu Value Added Tax Act does not empower the respondent to pass a provisional assessment order, after the expiry of the Assessment Year and hence, the impugned order is illegal, invalid and without jurisdiction. In support of his submission, the learned counsel for the petitioner also relied on the decision of this Court reported in (2009) 23 VST 283 (Mad) (Kanchi Bakers & Sweets v. Assistant Commissioner (CT), Villivakkam Assessment Circle, Chennai), wherein it is held that if the petitioner had filed a return in accordance with Section 21, then the Assessing Authority was obliged under section 22(2) to pass an order on the basis of the return. The learned counsel for the petitioner further submitted that as there was no proposal to levy penalty in the revision notice dated 10.04.2015, the levy of penalty is violative of the principles of natural justice.

5.On the other hand, the learned Special Government Pleader appearing for the respondent, on instructions fairly submitted that the respondent is inclined to pass final assessment order for the whole year, since the Assessment Year itself is over.

6.In view of the submission so made by the learned Special Government Pleader for the respondent, without going into the issue involved herein, the impugned order passed by the respondent is set aside and the matter is remanded back to the Assessing Officer for passing regular assessment in respect of the Assessment Year 2014-2015, after affording due opportunity of hearing to the petitioner.

7.The writ petition is accordingly disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

rk

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Bazaar Circle, Salem.

+ 1 cc to M/s.C.Venkataraman, Advocate SR 60852

vs(co)
prk26/11

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