BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.19392 of 2015
and
M.P.(MD).No.1 of 2015

Tvl. Kaj- Deby Jeans Community,
Rep by its Proprietor J.Aruldoss,
K.S.M.Towers 130, Gandhiji Road,
Thanjavur-613 001. ... Petitioner

Vs.

The Commercial Tax Officer,
Thanjavur – I Assessment Circle,
Thanjavur. ... Respondents

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33973805256/2014-2015 dated 31.08.2015 and quash the same as illegal, invalid and against the provisions of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : M/s.A.Chandrasekaran
For Respondent : Mr.R.Karthikeyan
Additional Govt.Pleader

ORDER

The writ petition has been filed praying for a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN: 33973805256/2014-2015, dated 31.08.2015, and quash the same.

2. The petitioner is an authorised retail dealer of Tvl.Derby Clothing (P) Ltd., Chennai and and assessee on the file of the respondent under the Tamil Nadu Valud Added Tax Act, 2006. The petitioner in their regular course of business purchase readymade garments locally after payment of appropriate taxes and sold the same locally in their showroom. The petitioner's entire purchases and sales are covered by valid bills and the same are reported to the respondent through their monthly returns along with annexures and appropriate taxes and other amounts due thereon was paid after deducting Input Tax Credit. The petitioner reported a total and

taxable turnover of Rs.87,62,463/- for the year 2014-2015 through their monthly returns and adjusted the Input Tax Credit available to them against their liability of tax dues. While so, the respondent issued a notice dated 29.07.2015 wherein he has stated that on scrutiny of the Annexure-I of Return in Form-I filed by the petitioner with that of the Annexure-II of Tvl.Derby Clothing (P) Ltd., Chennai reveals certain purchase omissions and proposed to estimate sales suppression therefrom under Section 22(4) of the TNVAT Act and further proposed to levy penalty @ 150% under Section 22(5) of the TNVAT Act. The above said notice was served on the petitioner on 10.08.2015 and the petitioner had time till 25.08.2015 to file their objections. But due to the busy schedule of the petitioner's marriage fixed on 16.09.2015, he could not file their objections to the aforesaid notice, dated 29.07.2015. In the meanwhile, the respondent passed the impugned order vide his proceedings in TIN 33973805256/2014-2015, dated 31.08.2015, confirming the proposals and assessed the petitioner under Section 22(4) of the TNVAT Act, without grant of personal hearing as contemplated therein and levied a tax of Rs.36,552/- on the estimated sales suppression and further levied a penalty of Rs.54,825/- under Section 22(5) of the TNVAT Act.

3.It is the further case of the petitioner that the aforesaid order taken as being passed under Section 27 of the TNVAT Act, since no original assessment order accepting the petitioner's returns as per Section 22(2) of the TNVAT Act has been passed nor the deemed assessment period as contemplated in Section 22(2) of the TNVAT Act has been expired i.e., 31.10.2015. Hence, he has come forward with the present writ petition.

4. The learned counsel for the petitioner submitted that without considering the detailed objection given by the petitioner firm and without providing an opportunity of hearing, the impugned orders have been passed. Hence, the impugned orders are liable to be set aside.

5. The learned Additional Government Pleader appearing for the respondent reiterating the counter affidavits filed by him has vehemently opposed the submission of the learned counsel for the petitioner and prayed for the dismissal of the writ petition stating that the impugned order does not suffer from any illegality.

6. Considering the facts and circumstances of the case, this Court passes the following order:-

The petitioner firm is directed to remit 15% each of the disputed tax in question to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the orders impugned in the Writ Petition stands set aside and the respondent is directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, this Writ Petition stands disposed of. No costs, consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Thanjavur – I Assessment Circle, Thanjavur.

+1cc to Mr.G.Karnan, Advocate Sr.No.63344
+1cc to The Special Government Pleader Sr.No.63416

akm/16.11.2015 /3p-4c/

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