In the High Court of Judicature at Madras

Dated : 09.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.8365 of 2014 & MP.No.1 of 2014

Tvl.Sri Kumaran Spinn, rep.
by its Partner S.S.Devaraj ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Avinashi Assessment
Circle, Avinashi, Tirupur,
Coimbatore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the proceedings of the respondent in TIN 33702080405/2011-12 dated 31.1.2014 and quash the same.

For Petitioner : Mr.S.Raveekumar
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard both.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. In this writ petition, the petitioner challenged the order of assessment passed by the respondent, while exercising power under Section 27 of the said Act.

3. The primary grounds, on which, the petitioner challenged the impugned order are that an opportunity of personal hearing was not granted and that without there being a proposal to levy interest and penalty, the same were levied in the impugned order.

4. It is not in dispute that the petitioner, while submitting their objections to the revision notice, sought for an opportunity of personal hearing, which has not been afforded by the respondent. This is sufficient to hold that the impugned

order has been passed in violation of the principles of natural justice, since affording an opportunity of personal hearing is mandatory, especially when there is a specific request made by the dealer to that effect.

5. The other aspect that could be seen is that there is no proposal either in the notice dated 24.8.2012 or in the revision notice dated 14.9.2012 for levy of interest and penalty. Thus, without affording an opportunity to the petitioner, interest and penalty have been levied. This is also one more ground to set aside the levy of interest and penalty, which shall be considered afresh after notice to the petitioner.

6. However, considering the other reasons assigned by the respondent in the impugned order, this Court is of the view that while considering the claim of the assessee, the interest of the Revenue should be protected.

7. Therefore, without prejudice to the rights of the petitioner, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax and if such payment is made within two weeks from the date of receipt of a copy of this order, the petitioner is entitled to treat the impugned proceedings as a show cause notice and submit their objections within a period of 15 days therefrom. On receipt of the objections, the respondent shall consider the same, afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law, by independently considering the objections filed by the petitioner without solely being guided by the report of the Enforcement Wing officials. No costs. Consequently, the above MP is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT) (FAC), Avinashi Assessment Circle, Avinashi, Tirupur,
Coimbatore District.

+1cc to Mr.S.Raveekumar, Advocate Sr.64410

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and MP.No.1 of 2014

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srg 07/12/2016