IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.10.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.13570 of 2015
and
M.P.No.1 of 2015

M/s.Natham Music Media
Rep by its Partner,
No.15, Radhakrishnan Road,
T.Nagar, Chennai-17. ... Petitioner

Vs

The Assistant Commissioner [CT],
T.Nagar Assessment Circle,
No.46, Greenways Road, III Floor,
Chennai-28. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records of the respondent in the impugned order in TIN No.33261562085/2012-13 dated 23.03.2015 and quash the same.

For Petitioner : Ms.Radhika Chandra Sekhar

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Ms.Radhika Chandra Sekhar, learned counsel for the petitioner assisted by Ms.Nanditha, learned counsel and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent.

2. The petitioner is a registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 [the Act], engaged in the sale of pre-recorded DVDs and CDs and they are said to be discharging applicable VAT in terms of the Act. In this Writ Petition, the petitioner challenges the order of assessment issued by the respondent for the year 2012-13.

3. The petitioner's contention is that the impugned Assessment Order has been passed relying upon the ruling given

by the Authority for Clarification And Advance Ruling [ACAAR] dated 25.07.2012, in the case of an application filed by M/s.Parekh Integrated Services Private Limited. The petitioner would contend that solely based upon the said advance ruling given on an application filed by some other dealer, the respondent could not have completed the assessment. The impugned order states as if the petitioner is engaged in selling blank DVDs and CDs. The petitioner contends that it is factually incorrect and they are selling only pre-recorded music DVDs and CDs. Further, the learned counsel places reliance on the Notification dated 01.01.2007 to substantiate their contention that Entry 13-A[v] of Part C of First Schedule will not be applicable.

4. I have heard the learned Government Advocate on the above submission.

5. On perusal of the impugned order, it is evidently clear that the respondent was solely guided by the ruling given by the ACAAR dated 25.07.2012 and which admittedly have not been made on an application by the petitioner, but by some other dealer. The contentions raised by the petitioner in their objections dated 09.01.2015 and the decisions referred to have not been discussed by the respondent, while completing the assessment. Hence, the impugned proceedings are in violation of Principle of Natural Justice and has to be held as devoid of reasons. On such ground alone, the petitioner is entitled to succeed and this Court is inclined to interfere with the impugned order.

6. Accordingly, the Writ Petition is allowed and the impugned order in TIN No.33261562085/2012-13 dated 23.03.2015 is set aside and the respondent is directed to afford an opportunity of personal hearing to the petitioner, examine the nature of the prosecution. Taking note of the Notification relied on by the learned counsel for the petitioner as well as the decisions, take a fresh decision in the matter on merits and in accordance with law and should not be solely guided by the ruling given by the ACAAR dated 25.07.2012. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

gya

To

The Assistant Commissioner [CT],
T.Nagar Assessment Circle,
No.46, Greenways Road, III Floor,
Chennai-28.

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.57606
+1cc to the Special Government Pleader(T), S.R.No.57730

W.P.No.13570 of 2015
and
M.P.No.1 of 2015

AD(CO)
CA(08/11/2016)