IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13649 of 2015
and
MP.No.1 of 2015

M/s.S.V.Swamy Agency,
Rep. By its Proprietor,
No.370/72, M.T.H.Road,
Ambattur, Chennai - 53 ... Petitioner

Vs.

The Commercial Tax Officer,
Pattarawalkam Assessment Circle,
No.5, South High Court Colony,
Villivakkam, Chennai - 600 049. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorarified mandamus to call for the impugned proceedings of the respondent in TIN 33661361366/2011-2012 and quash the impugned order dated 31.03.2015 as passed contrary to the provisions of the TNVAT Act and also in violation of the principles of natural justice and further direct the respondent to provide for the details requested by the petitioner in its letter dated 21.03.2015 to enable the petitioner to file its objections and thereafter to pass orders in accordance with law.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) for the respondent department, and with their consent, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provision of the Tamil Nadu Value Added Tax Act, 2006 (TN VAT Act), has filed the writ petition challenging the assessment order dated 31.03.2015 under the provisions of the TN VAT Act for the year 2011-2012. The only ground on which the impugned order has been challenged by contending that the same is in violation of the principles of natural justice. The petitioner has

received the pre-assessment notice dated 11.03.2015, in which it is stated that on verification of the departmental website, it revealed that the petitioner has effected purchases from various dealers in the relevant year and they have not disclosed the same in the turnover to the department. Therefore, the respondent proposed to revise the assessment under Section 27(1)(a) of the TNVAT Act. The petitioner submitted their objections dated 21.03.2015, in which, the petitioner stated that they have not been furnished the details and the respondent has merely relied on the departmental website. Therefore, the petitioner requested (i) the details for purchases along with copies of bills of their suppliers; (ii) details of transportation and details of freight paid; and (iii) details of payment made by them for the purchases.

3. It is not in dispute that on receipt of their objections wherein the petitioner sought for certain materials, the respondent has given the entire set of purchase details from the other dealers in a tabulated format, which shows the sellers' TIN Number, their office, their name, year, category of sale, invoice number, sales tax paid, etc. Though the petitioner has received the details, which is in a tabulated format, they did not file any fresh objection nor raised any new plea. Therefore, the authority has proceeded to complete the assessment by passing the impugned order. After the impugned order was passed, now the petitioner claims that they should have been granted some more details, so as to enable them to give a detailed objection. In my view, this submission appears to be an afterthought. However, the learned counsel for the petitioner pleads that one more opportunity may be granted to the petitioner who is a small dealer having meagre business income so as to go before the assessing officer and place all the materials .

4. This Court is inclined to consider such a request of the petitioner, but, however, subject to certain conditions. Accordingly, the writ petition is disposed by directing the petitioner to pay 15% of the tax as quantified in the impugned assessment order within a period of six weeks from the date of receipt of a copy of this order. If the petitioner makes the payment as directed, then the petitioner is entitled to treat the impugned proceedings as show cause notice and submit their objections within a period of 15 days therefrom. On receipt of such objections, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to complete the assessment in accordance with law. If the petitioner fails to comply with the condition of payment as stipulated above, the benefit of this order will not enure to the petitioner and the writ petition stand automatically dismissed leaving it open to the party to workout the remedy under law. It is open to the petitioner to approach the respondent in person and request for further details if any required.

5. With the above directions, the writ petition stands disposed of. No Costs. M.P.No.1 of 2015 is closed. The Registry is directed to return the original impugned order.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Pattarawalkam Assessment Circle,
No.5, South High Court Colony,
Villivakkam, Chennai - 600 049.

+1 cc to Mr.Rajkumar, advocate,sr.39028

+1 cc to Spl.Govt.Pleader,sr.39173

mg(co)
krd 26/7

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