IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 21.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.4179 of 2013

SRI KRISHNA TEXTILES
REP BY ITS PROP
MR.P.M. SUBRAMANIAM NO.222
THAMBI THOTTAM AMMAPALAYAM
PALLADAM 641
664 TIRUPUR DISTRICT ... petitioner

versus

THE COMMERCIAL TAX OFFICER
PALLADAM ASSESSMENT CIRCLE PALLADAM
TIRUPUR DISTRICT ... respondent

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records on the files of the respondent in TIN No. 33716241360/11-12 dt 28.12.2012 and quash the same as being without jurisdiction and authority of law and contrary to the principle of natural justice and further direct the respondent to pass order afresh after grant of copies of records and opportunity for filing objection as requested by the petitioner vide his representation dated 18.10.2012.

For petitioner ... Mr.R.Senniappan
For respondents ... Mr.V.Haribabu, A.G.P.

O R D E R

Heard Thiru.R.Senniappan and Thiru.V.Haribabu, learned Additional Government Pleader, appearing for the respondent.

2. With the consent of both sides, the Writ Petition itself is taken up for disposal.

3. The petitioner has filed this Writ Petition challenging the order of assessment for the year 2011-12 under the provisions of the Tamil Nadu Value Added Tax, 2006. The only reason given by the petitioner for bypassing the appeal remedy is that, without providing the documents sought for, the respondent has proceeded to complete the assessment.

4. On a perusal of the reply given by the petitioner to the show cause notice dated 27.9.2012, it is seen that the petitioner has requested the respondent to provide details of

the check post records through which the said consignment has been transported and the person in-charge of the vehicle and also the copy of the documents accompanied with the transport and opportunity for cross examination of the persons who have transported the consignment and the officer who made the physical verification.

5. Admittedly, the petitioner seeks for records maintained by check post and other documents whereas the impugned assessment has been made based on the verification of bills wherein it is found that the petitioner has maintained two seal bill books, one for the sales of cone yarn and another for sales of hank yark. Though the petitioner has given a cheque for Rs.15,00,000/-, to the enforcement officials accepting the liability subsequently he filed a Writ Petition in W.P.No.19603 of 2012 and the cheques have been returned pursuant to the order passed therein on 31.7.2012.

6. Be that as it may, mere issuance of the cheques cannot be a ground for admission of the liability. However, the reasons assigned by the Assessing Officer have been made after analyzing the materials which are placed before him. Therefore, to assess as to whether the finding recorded by the Assessing Officer are borne out by records, the assessment files and connected records have to be perused and the dispute has to be verified to examine as to whether there are any discrepancies. These issues cannot be considered in a Writ Petition filed under Article 226 of the Constitution of India. Therefore, this Court is of the view that the petitioner should file a statutory appeal before the Appellate Authority.

7. In the light of the above, it is held that the impugned order cannot be interfered at this stage for the reasons assigned above and the petitioner is directed to prefer an appeal before the Appellate Authority. If any such appela is preferred within a period of thirty days from the date of receipt of a copy of this order, the Appellate Authority shall entertain the appeal without reference to limitation.

8. Till the appeal is filed in terms of liberty granted by this Court, the impugned order of assessment shall not be enforced.

9. After the above order was dictated, the learned counsel for the petitioner submitted that the original impugned order may be returned.

10. The Registry is directed to return the original impugned order.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

tar

To

THE COMMERCIAL TAX OFFICER
PALLADAM ASSESSMENT CIRCLE PALLADAM
TIRUPUR DISTRICT

+1cc to Mr.R.Senniappan, Advocate, S.R.No.34584
+1cc to the Government Pleader, S.R.No.34784

CA(CO)
EU(14/07/2016)

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