In the High Court of Judicature at Madras

Dated : 02.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18404 of 2016 & WMP.No.16102 of 2016

Tvl.P.K.Japee & Co., rep.by
its Partner Varun P.Japee ...Petitioner

Vs

The Assistant Commissioner (CT),
Kothawalchavadi Assessment
Circle, Chennai. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN/33600200115/2013-14 dated 28.3.2016 served on 12.4.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered dealer in glassware and glass decoration items, etc., under the provisions of the Tamil Nadu Value Added Tax Act, 2006. The order of assessment is for the financial year 2013-14. The petitioner was issued with a notice dated 14.1.2016 by the respondent stating that on verification of Form WW, the petitioner has reported other income for Rs.56,55,687/- under the said Act for the year 2013-14 and that the other income are liable for tax at 14.5%. Therefore, the petitioner was directed to file details of other income within a period of seven days from the date of receipt of the said notice.

3. The petitioner, by their reply dated 1.2.2016, informed the respondent that they are primarily an indenting agency, that they represent national and foreign companies in the area and that they look after all round indents of those companies,

receive commission on such services rendered and pay service tax for the same. During the assessment year 2013-14, the petitioner stated that they received commission from M/s.Sumangal Glass Private Limited. Thereafter, one more reply was given on 15.2.2016 stating that the receipt of commission against the indenting agency business is shown under the head 'other income' reported in Form WW for 2013-14 and the TDS has been deducted by their principal for payment of commission receipts under Section 194 of the Income Tax Act. The relevant documents to support their stand have been enclosed in the reply dated 15.2.2016. The petitioner further informed that commission receipts were also reported to the Service Tax Authorities and the service tax paid on the same. Though those documents were placed for the consideration of the respondent, the respondent, by the impugned order, has not assigned any reasons as to why the documents produced by the petitioner to prove that they have remitted service tax, are not acceptable.

4. As pointed out by the Hon'ble Supreme Court in the case of Steel Authority of India Limited Vs. S.T.O. [(2008) 16 VST 181], the right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate application of mind to the matter before the Court, Tribunal or Authority and that the affected party has to know why the decision has gone against him.

5. In the instant case, the reasons are not forthcoming as to why the case of the petitioner, as projected by them in the representations, is not found acceptable. Furthermore, an opportunity of personal hearing was not afforded to the petitioner, more so, when the petitioner would state that they are only indenting agents representing national and foreign companies. Hence, on this technical ground alone, the impugned order calls for interference.

6. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner or their authorized representative and after considering all the documents including the proof to show that service tax has been paid, pass a reasoned order on merits and in accordance with law as expeditiously as possible. No costs. Consequently, the above MP is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Kothawalchavadi Assessment Circle,
Chennai.

+ 1 cc to Govt.Pleader SR 29567

+ 1 cc to Mr.R.Seeniappan, Advocate SR 29341

rsy(co)
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