In the High Court of Judicature at Madras

Dated : 07.6.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18991 of 2016 and WMP.No.16552 of 2016

M/s.Sujatha Battery Service, rep.
by its Proprietor Mr.R.Baskaran ...Petitioner

Vs

1.The Commercial Tax Officer (Addl.),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam.

2.The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN: 33854724203/2012-2013, quash the impugned orders dated 15.3.2016 and the consequential order dated 30.4.2016 as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act and in violation of principles of natural justice and further direct the first respondent to grant reasonable opportunity to the petitioner and pass a fresh assessment order for the assessment year 2012-2013 in accordance with law after considering the annual return filed by the petitioner.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.Manohar Sundaram, AGP

ORDER

Mr.Manohar Sundaram, learned Additional Government Pleader takes notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the proceedings of the

first respondent dated 15.3.2016 revising and determining the total and taxable turnover under Section 22(4) of the said Act for the assessment year 2012-13, apart from imposing penalty. The petitioner has also challenged another order passed by the first respondent dated 30.4.2016, by which, the first respondent rejected the petitioner's application filed under Section 22(6) of the said Act for making a fresh assessment for the same assessment year.

3. The petitioner has challenged the impugned proceedings on the ground that they are in violation of the principles of natural justice and the person, who ought to have decided the matter, did not decide the same, though the petitioner had filed objections to the notice proposing to revise the turnover.

4. Admittedly, the show cause notice dated 23.1.2014 was issued to the petitioner by the second respondent, before whom, the petitioner is a registered dealer. The petitioner filed their objections on 13.2.2014. Thereafter, another notice was issued on 15.2.2014 by the second respondent, for which, the petitioner again filed their objections on 3.3.2014. However, there appears to be no action initiated by the second respondent and nearly after one year, the first respondent issued a notice on 15.4.2015 with respect to the same assessment year, however, without reference to the notices issued by the second respondent dated 23.1.2014 and 15.2.2014. On receipt of the notice dated 15.4.2015, the petitioner submitted their objections before the first respondent on 5.5.2015. Thereafter, nothing happened for almost one year and the petitioner was issued the impugned order dated 15.3.2016 by the first respondent by referring to their objections dated 5.5.2015, overruling the same and determining the total and taxable turnover and also imposing penalty.

5. This order is being challenged as an outcome of total non application of mind and in violation of the principles of natural justice and without affording an opportunity of personal hearing. On receipt of the order dated 15.3.2016, the petitioner filed an application for fresh assessment under Section 22(6) of the said Act on 15.4.2016. This application was rejected by the consequential order dated 30.4.2016 alleging that the petitioner has not filed any objections to the show cause notice dated 15.4.2015.

6. A perusal of the impugned order dated 15.3.2016 itself makes it clear that the petitioner was not afforded an opportunity of personal hearing. That apart, the first respondent proceeded to state that the they have not filed any valid records in support of their contentions.

7. It is pointed out by the learned counsel for the petitioner that on receipt of the show cause notice from the second respondent dated 15.2.2014, the petitioner filed detailed objections on 3.3.2014 along with copies of sale bills and other records. This was reiterated by the petitioner, when they received the notice from the first respondent dated 15.4.2015, in their reply dated 5.5.2015.

8. Therefore, the first respondent, without verifying the records and without affording a reasonable opportunity to the petitioner, has passed the order dated 15.3.2016. In so far as the application filed by the petitioner for fresh assessment under Section 22(6) of the said Act is concerned, it is not known as to how the first respondent has stated that the petitioner has not filed any objection to the show cause notice dated 15.4.2015, when, in the assessment order dated 15.3.2016 (impugned order), the first respondent recorded that the petitioner gave their objections vide letter dated 5.5.2015. Therefore, the consequential order dated 30.4.2016 is also untenable.

9. Accordingly, the writ petition is allowed, the impugned orders are set aside and the matter is remitted back to the first respondent for fresh consideration. The first respondent shall afford an opportunity to the petitioner to submit further objections and produce necessary records and after affording an opportunity of personal hearing to the petitioner, the first respondent is directed to pass a speaking order on merits and in accordance with law. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

To
1.The Commercial Tax Officer (Addl.),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam.
2.The Commercial Tax Officer (Main),
Tindivanam Assessment Circle,
Nehru Street, Tindivanam.
1 cc to P.Rajkumar, Advocate, sr.30061
1 cc to Government Pleader(Taxes), sr.30372

WP.No.18991 of 2016 &
WMP.No.16552 of 2016

vs co
kra 15.06.2016