IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 27.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.30238 of 2015
&
M.P.No.1 of 2015

Tvl.Shri Ganesa Textiles
Represented by its Proprietor
P.K.Ganeshwar
No.21, Pollachi Road
Palladam- 641 664 .. Petitioner

Vs.

The Commercial Tax Officer
Palladam .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus calling for the records of the petitioner on the files of the respondent herein in TIN No.33326240362/2009-2010 and quash the impugned proceedings dated 29.07.2005 by holding that the same is without jurisdiction in so far as it imposes local VAT on the transaction that admittedly took place outside India in respect of Carbon Credit on account of Certified Emission Reduction (CWR) which are not at all goods but only an allowance for reduction of emission and being contrary to the law laid down by Apex Court in the case of Tata Consultancy Services Vs. State of Andhra Pradesh (2004) reported in 137 STC 620 (SC).

For Petitioner : M/s.Adithya Reddy

For Respondents : Mr.S.Manoharan Sundaram
Additional Government Pleader

O R D E R

Heard Ms.Adithya Reddy, learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent. With the consent of learned counsel appearing on either side, 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 provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), questions the Order of Assessment dated 29.07.2015 for the year 2009-2010. The order has been questioned on several grounds and the first among the grounds are that the entire issue arose out of an inspection conducted in the place of business by the Enforcement Wing officials, who submitted a report. Based on the said report, the respondent initiated proceedings to reopen the Assessment for the year 2012-13 as well as for the year 2009-10. With regard to the re-opening for the year 2012-13, the petitioner had filed a writ petition before this Court in W.P.Nos.25770 and 25771 of 2016, which was disposed of by order dated 16.06.2016. At this stage, it will be useful to refer to the operative portion and the direction issued in that writ petition:

> "3.At the time, when the writ petitions were entertained, this Court directed the learned Additional Government Pleader to get the original file to verify as to whether the objections dated 05.12.2014 has been received by the respondent.
>
> 4.Today (16.06.2016), the learned Additional Government Pleader has produced the original file, from which, it is seen that the said letter has been received by the respondent and it is in page No.65 of the file. Therefore, the petitioner could have been granted one more opportunity before proceeding to finalize the assessment exparte.
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> 5.In the light of the above, the writ petitions are allowed and the impugned orders are set aside. The petitioner is directed to submit their objections to the notices issued during March 2015 within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and consider the documents and objections raised and proceed to finalize the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."

3. Though the petitioner has raised other factual issues, the petitioner is ready and willing to go before the Assessing Officer and raise the issues as the petitioner is supported by the decisions of the Supreme Court in the case of Tata Consultancy Services Vs. State of Andhra Pradesh reported in (2004) 137 STC 620 (SC). Considering the fact that in respect of the re-opening for the year 2012-2013 has already been remanded for fresh consideration before the Assessing Officer, the present proceeding also having emanated from the same

Enforcement Officers' report, this writ petition is also disposed on similar lines.

In the light of the above, this writ petitions is allowed and the impugned order dated 29.07.2015 is set aside. The petitioner is directed to submit their objections to the impugned notice within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and consider the documents and objections raised and proceed to finalize the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

gpa

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Palladam.

+ 1 cc to Mr.Adithya Reddy, Advocate SR 35770

+ 1 cc to Spl. Govt.Pleader SR 35936

gj(ii)
prk18/7

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