IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 01.08.2016

CORAM ::

THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM

WRIT PETITION NO:33186 OF 2015
AND
M.P.NO.1 OF 2015

M/s Religare Finvest Limited
Rep.by Mr.R.Mamallan
Zonal Credit Operations Head
Having Offce at
The Oval, 5th Floor, Office No.10 & 12,
VenkatNarayana Road,
T.Nagar, Chennai 600 017. ... Petitioner

-vs-

1. Assistant Commissioner (CT),
Royapettah Assessment Circle,
46, Greenways Road,
Chennai 600 028.

2.Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Chennai 600 009.

3.Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George,
Chennai 600 009. ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the Order in TIN/33550782191/2012-13, dated 13.08.2015 passed by the 1st Respondent and quash the same.

For Petitioner :: Ms.R.Charulatha

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

O R D E R

Heard Ms.R.Charulatha, learned counsel appearing for the petitioner and Mr.S.Manohara Sundaram, learned Additional Government Pleader appearing for the respondents and with the consent of the learned counsel appearing on either side, the writ petition 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 (TNVAT Act), has filed this writ petition challenging the order of assessment for the year 2012-2013, on the ground that the impugned assessment has been completed, without affording an opportunity to the petitioner and without considering their request for extention of time by thier representation dated 23.07.2015. Further, the learned counsel appearing for the petitioner submitted that the mismatch between the monthly returns filed by the selling dealers and the returns filed by the petitioner, based on cross verification of the Departmental Website, cannot be a sole reason for revision of assessment. In this regard, the learned counsel appearing for the petitioner placed reliance on the decisions of this Court in the case of Althaf Shoes (P) Limited vs. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, [[2012] 50 VST 179(Mad.)] and Sri Vinayaga Agencies vs. Assistant Commissioenr (CT) Vadapalani I Assessment Circle, Chennai and Another [[2013] 60 VST 283 (Mad)].

3. The learned Additional Government Pleader appearing for the respondents produced a copy of the return instruction given by the respondents to the learned Special Government Pleader(Taxes) dated 29.12.2015, wherein the averments set out in the impugned order of assessment have been reiterated. Thus, the assessment has been completed on account of the fact that the petitioner did not submit their objections. However, in the written instrctions, there is no reference to the stand taken by the petitioner. However, with regard to the stand taken by the petitioner pertaining to request for extension of time, the respondents would state that the request for extension of time could not be accepted, since the petitioner has not even produced the original purchase bills, as contemplated under Section 19(1) of TNVAT Act, 2006. That apart, the petitioner had been granted 96 days time in between the pre-assessment notice and the passing of the assessment order. Therefore, there is violation of principles of natural justice.

4. From a bare persual of the letter dated 23.07.2015, given by the petitioner to the Assessing Officer, it is seen that the petitioner has produced copies of returns filed for the year 2012-2013 and sample copies of purchase invoices of each month from April 2012 to January 2013. Further, the

petitioner submitted that the dealers from whom, the cars have been purchased by the petitioner for giving finance lease, have discontinued the business and all the staff members, who used to inter-face with the petitioners have left. Therfore, they requested sufficient time for producing the sales tax returns of the dealers. If such representation was received by the respondents, the respondents should have passed order in writing fixing outer time limit for production of records and then proceed to finalise the assessment. However, that procedure had not been adopted. Therefore, it is clear that there is violation of principles of natural justice. However, it goes without saying that the petitioner is bound to produce the records available with them, to establish their bonafide. This responsibility rest on the petitioner and cannot be refused to be met.

In the light of the above, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded back to the respondents, with a direction to the petitioner to appear before the respondents within a period of two weeks from the date of receipt of a copy of this order, produce all the records in their custody and give appropriate explanation along with the records, which shall be considered by the respondents after affording opportunity of personal hearing to the petitioner. No costs. Consequently connected Miscellaneous Petition is also closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

1. Assistant Commissioner (CT),
Royapettah Assessment Circle,
46, Greenways Road, Chennai 600 028.

2. Commissioner of Commercial Taxes,
Chepauk, Ezhilagam Complex,
Chennai 600 009.

3. Government of Tamil Nadu,
Represented by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai 600 009.

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