IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23419 of 2016
and
WMP.No.20075 of 2016

Tvl.Galaxy Enterprises,
Rep. By its Proprietor,
No.5, Suriya Gandhi Street,
Vivekananda Nagar,
Ambattur, Chennai. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Ambattur Assessment Circle,
Chennai - 49. ... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue Writ of certiorari to call for the records of the order of the respondent dated 19.05.2016 in TIN/33466345045/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.S.Kanmani Annamalai, AGP (T)

O R D E R

Heard Mr.Adithya Reddy, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Tax) for the respondent department, and with their consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provision of the Tamil Nadu Value Added Tax Act, 2006 (TN VAT Act). In this writ petition, the petitioner has challenged a notice of attachment issued by the respondent under Rule 16(5) of the TN VAT Rules proposing to attach the petitioner's bank account for recovery of the amount of tax and penalty as assessed in the order dated 19.05.2016.

The respondent issued a pre-revision notice dated 13.05.2016 stating that on scrutiny of the petitioner's return for the year 2015-16, it was found that the petitioner has purchased the goods to a value of Rs.52,10,738.00/- and availed Input Tax Credit (ITC) to the tune of Rs.2,60,539/- and that the petitioner is not eligible to claim Input Tax Credit. Therefore, the petitioner was directed to submit their objections within a period of three days. On receipt of the notice, the petitioner made a request to the respondent, by a letter dated 17.05.2016, requesting for 15 days time. This was sent by speed post and has been received in the office of the respondent on 20.05.2016. However, the respondent proceeded to complete the assessment by passing the order dated 19.05.2016 stating that though the petitioner has received the pre-revision notice, they have not filed any objection. Simultaneously, notice of attachment has also been issued.

3. As could be seen from the materials placed on record, a request has been made by the petitioner for grant of 15 days time for submitting their objections. However, the respondent, without even either accepting or rejecting their request, straightaway proceeded to complete the assessment. In terms of the circular dated 03.02.2014 issued by the Principal Secretary / Commissioner of Commercial Taxes, Chennai, 15 days time has been held to be reasonable before passing an order. The manner in which the respondent has proceeded to finalise the assessment is not only contrary to the said circular, but it is in total violation of the principles of natural justice. Accordingly, the order of assessment dated 19.05.2016 for the year 2015-2016 as well as the consequential demand/attachment notice are quashed and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit their objections within a period of 15 days from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and proceed to finalise the assessment in accordance with law.

4. With the above directions, the writ petition is allowed. No Costs. WMP.No.20075 of 2016 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm

To

The Deputy Commercial Tax Officer,
Ambattur Assessment Circle,
Chennai - 49.

+ 1 CC to Spl. Govt. Pleader SR NO 39168

+ 2 CCs to Mr.Adithya Reddy, Advocate SR NO 39146, 38916

W.P.No.23419 of 2016

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