IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24233 of 2016
and
WMP.Nos.20701 & 20702 of 2016

Vaga Enterprisees
[Represented by its Sole Proprietrix
R.Ajitha Kumari]
No.18/P1, Abusali Street,
Saligramam, Chennai - 600 093. .. Petitioner

Vs.

The Assistant Commissioner [CT]
Saligramam Assessment Circle,
No.21, G K Industrial Estate 1st Main Road,
Chennai - 600116. .. Respondent

Prayer :Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the files of the respondent herein in TIN/33861392975/2014-15 dated 15.06.2016 and quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

ORDER

Heard Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent and with their consent, the Writ Petition itself is taken up for final disposal.

2.The petitioner is a dealer in raw rubber sheets and registered under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956 on the file of the respondent. The petitioner in this writ petition has challenged the assessment order dated 15.06.2016 for the year 2014 - 2015. The respondent issued a notice to the petitioner dated 27.05.2016 referring to earlier notice dated 27.08.2015 wherein the petitioner was requested to produce copies of purchase invoices, transportation and payment details for the purchases effected from M/s.Grown Marketing. While acknowledging the same, the petitioner has furnished the copies of the invoices and payment details, but not furnished transportation details of goods. Along with their reply dated 14.09.2015, it was stated that the Commercial Tax Officer, Thackalay, vide proceedings dated 24.05.2016, has reported to the respondent that M/s.Grown Marketing, Pinamthode Kulasekaran Post is a bogus dealer. Further, the respondent stated that the petitioner has availed input tax credit for the purchases effected from M/s.A.K.Traders but the selling dealer have not reported the sales and paid tax. Therefore, the petitioner was informed that though the petitioner produced purchases invoices, in the absence of proof for inward movement of goods, the respondent concluded that the purchases effected from those two dealers viz., M/s.Grown Marketing and M/s.A.K.Traders are bogus. Therefore, it was alleged that the petitioner has committed an offence by conspiring with the selling dealers who are bill traders leading to cheating the Government and causing loss of revenue. Further, the respondent concluded that the purchases are bogus and the input tax credit availed is also bogus and it is in contravention of Section 19(13) & 19(16) of the TNVAT Act and proposed to reverse the input tax credit claimed by the petitioner. After furnishing those details, the respondent directed the petitioner to pay a sum of Rs.68,93,000/- along with interest. There was a proposal to levy penalty under Section 27(4) of the TNVAT Act, 2006. The petitioner was granted 10 days time to file their objections. The petitioner submitted their objections dated 13.06.2016 pointing out the genuineness of the transaction with those two dealers and stated that they were of the opinion that the invoices are prima facie evidence for claiming input tax credit and all payments to those two dealers were through bank transactions duly authenticated and this will also act as an evidence to show that actual business transaction had taken place. Further, the petitioner stated that the products involved in the business transaction are delivered to M/s.Thejo Engineering at Kulasekaram Branch Office and they in turn transport the products to M/s. T V S Sri Chakara Limited, Madurai and the documents relating to transport of goods by M/s.Thejo Engineering could be presented before officials as supporting documents for the business transaction. Further, the petitioner stated that since the goods had been delivered within the same circle, no documentation process were carried out. Further, in the objections, it was pointed out that they have properly remitted the tax liability and filed monthly returns and all input tax credit are claimed through proper VAT invoices issued by the registered VAT dealers and all payments towards such invoices were genuinely made for actual business transactions held through bank channel and it is evident that the two dealers are gross defaulters in the case and the liability falls on them. Further, the petitioner requested one month time as they are in the process of tracing M/s.Grown Marketing, who have absconded subsequent to the notice issued by the Sales Tax Department. With the above objections and evidences, the petitioner requested to drop the charges listed against them in the notice dated 27.05.2016.

3.The respondent, after receipt of the reply, has completed the assessment and though the order of assessment is a 8 page order, the finding rendered by the Assessing Officer is only the bottom of page No.7 of the order. From a perusal of the finding of the respondent is only in one paragraph titled 'Conclusion of the Assessing Officer'. On a reading of the said paragraph, it is evidently clear that the assessment has been completed in a most cryptic and arbitrary manner. None of the contentions raised by the petitioner has been gone into, in fact, when the respondent has recorded that documents relating to transport of goods by M/s.Thejo Engineering were produced for verification, the respondent arbitrarily stated that the petitioner have not contested the matter with documentary evidences for Transport of goods. It is rather surprising as to how the respondent would have passed such an order, when she has recorded that transport documents were produced for verification. Thus, it is evidently clear that it is a case of total non application of mind on the part of the respondent.

4.Furthermore, in the notice dated 27.05.2016 reference has been made to the communication given by the Commercial Tax Officer, Thackalay dated 24.05.2016. Copy of the same was not furnished to the petitioner nor the respondent appreciated the fact that the petitioner wanted one month time to trace the said dealer, M/s.Grown Marketing who said to be absconding. If the respondent had doubted the genuineness of the transactions, then, in the given facts and circumstances, they could have issued notices to M/s.Thejo Engineering, M/s.T V S Sri Chakara Limited and M/s.Grown Marketing and gathered details from the respective dealers or from their Assessing Officers and after due enquiry, the assessment could have been completed. However, this procedure which ought to have been followed, has not been adhered to, it has to be termed untenable. That apart, as pointed out earlier, even in the notice dated 27.05.2016, the respondent has pre-decided the matter in as much as there is a direction to the petitioner to pay Rs.68,93,000/- along with interest. Thus, the notice dated 27.05.2016 itself is defective as the opportunity granted to the petitioner to file objections is an empty formality. That apart, the impugned assessment order has been passed on the same day, when the petitioner submitted his objections dated 15.06.2016. This itself would indicate that the respondent had pre-judged the issue and the action in calling for objection is reduced to an empty formality. Hence, the notice dated 27.05.2016 as well as the impugned assessment order dated 15.06.2016 are held to be bad in law.

5.Accordingly, the Writ Petition is allowed and the impugned assessment order dated 15.06.2016 is quashed and the pre-revision notice dated 27.05.2016 is also quashed. It is open to the respondent to initiate fresh action in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

sgl

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner [CT]
Saligramam Assessment Circle,
No.21, G K Industrial Estate 1st Main Road,
Chennai - 600116.

+ 1 cc to Mr.N.Inbarajan, Advocate SR 39244

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