

In the High Court of Judicature at Madras

Dated : 25.7.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.25716 of 2016 & WMP.No.22065 of 2016

M/s.RIDSYS rep.by its Managing
Partner S.Manikandan

...Petitioner

Vs

1.Union of India, rep.by the Chief
Secretary, Government of
Puducherry, Puducherry.

2.The Additional Commercial Tax
Officer-IAC, Commercial Tax
Department, Puducherry.

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the entire records pertaining to impugned order No.34720019467/ADCTO-IAC/2015 dated 3.2.2015 passed by the second respondent and to quash the same as highly illegal and arbitrary and against the procedure established by Puducherry Value added Tax Act, 2007.

For Petitioner : Mr.V.Vasanthakumar

For Respondents : Ms.Reena Ishwarya, AGP (Puducherry)

ORDER

Ms.Reena Ishwarya, learned Additional Government Pleader (Puducherry) takes notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition to quash the assessment order passed by the second respondent dated 3.2.2015 under the provisions of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as the PVAT Act).

3. The petitioner is a firm registered under the provisions of the PVAT Act and the Central Sales Tax Act, 1956. The petitioner's manufacturing unit was inspected on 30.9.2014 by a Team of officials of the second respondent. The Inspecting Team was informed by the petitioner that the petitioner is an importer of various components of set-top boxes and after integrating the components and after loading the respective software in them, they sold them on re-sale basis in the Union Territory of Puducherry and other States. During inspection, the Inspecting Team called upon the petitioner to furnish details with regard to sales made to M/s.Sky Vision, Vikas Colony at Yanam. The Inspecting Team also recovered three invoices from the dealer for a total value of Rs.1,29,00,000/-. The allegation against

the petitioner is that two invoices, out of three, which were seized, contained the details of sale made to a dealer in the Union Territory of Puducherry and the dealer concerned had treated it as an inter-state sale purposely to charge and remit tax at a lower rate in order to defraud the Revenue. In respect of the third invoice, it was found that it could be claimed to be an inter-state sale, subject to production of C-Forms.

4. Thus, the Inspecting Team was of the prima facie opinion that the very act of treating an intra-state sale as an inter-state sale is a clear attempt on the part of the petitioner to evade actual tax due on its turnover and amounts to an offence under Section 59 of the PVAT Act. Apart from that, there were other violations and discrepancies, which were found during the course of inspection. Based on the observations of the Inspecting Team, the dealer was instructed to remit tax at 14.5% on the turnover that has been effected by them for the financial year 2014-15. The petitioner was given an opportunity to dispute the proposal made with valid documentary evidence either in person or through their authorized representative on or before 30.10.2014. On 29.10.2014, the petitioner submitted a letter requesting 30 days' time for filing a reply. This request was considered and time was granted till 12.11.2014.

5. On 12.11.2014, the dealer filed a reply and the reply was considered. The details from the petitioner's bank account were also taken into consideration and the second respondent concluded that nature of the transactions clearly reveals that the petitioner supplied set top boxes to M/s.Sky Vision, Yanam and nowhere they produced the details of the invoice, under which, the above supply was being made. Further, the second respondent held that there was no proper documentary evidence to support their claim and that the invoices mentioned in the notice dated 16.10.2014 were only proforma invoices. Therefore, the original notice was confirmed by the Inspecting Officer and the dealer was directed to pay tax and penalty on or before 31.12.2014. Since the petitioner did not pay tax and penalty within the time stipulated, the demand of tax and penalty was confirmed and the second respondent passed the impugned order.

6. Learned counsel for the petitioner contended that in terms of Section 24(3) of the PVAT Act, the second respondent ought to have heard the petitioner before imposing penalty. That apart, no personal hearing was provided to the petitioner. In support of his contention, reliance is placed upon the judgment of this Court in the case of State of Tamil Nadu Vs. A.N.S.Gupta & Sons [reported in (2011) 38 VST 45] wherein the Hon'ble Division Bench, while considering the scope of Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006, which is a pari materia provision, held that an opportunity of personal hearing is mandatory. Thus, the ground, on which, the impugned order has been challenged, is by contending that it is in violation of the principles of natural justice.

7. The learned Additional Government Pleader appearing for the respondents submits that the impugned order is dated 3.2.2015 and that there is no explanation given by the petitioner in the affidavit filed in support of the main writ petition as to why the petitioner

did not take any steps to challenge the order by resorting to remedies available under the PVAT Act and the petitioner has rushed to this Court only after their bank accounts have been attached. It is further pointed out that one of the partners of the petitioner firm is a Government servant working in the Government of Puducherry and this came to light only during the course of inspection, that a separate action has been initiated by the Intelligence Department and that after coming to know of this, the partner, who has been working in the Government of Puducherry, resigned from partnership.

8. After hearing both the learned counsel for the petitioner as well as the Additional Government Pleader, this Court is of the view that since there is no explanation for the inordinate delay in challenging the impugned order, this Court would have been well justified to dismiss the writ petition at this stage. However, considering the fact that interests of the Revenue are also involved and that the petitioner should not be left without any remedy, especially in the light of the fact that the petitioner alleges that they have not been heard in person, this Court passes the following order :

"(i) The petitioner is directed to pay 15% of the tax as quantified in the impugned order within a period of six weeks from the date of receipt of a copy of this order.

(ii) If the petitioner pays 15% of the tax quantified, then the petitioner will be entitled to treat the impugned proceedings as a show cause notice and submit their objections within a period of two weeks therefrom. On such payment, the demand of remaining amount towards penalty, etc., shall remain stayed and the attachment on the bank accounts of the petitioner shall stand lifted.

(iii) Thereafter, the second respondent shall hear the petitioner and redo the entire assessment in accordance with law and

(iv) If the petitioner fails to comply with the condition imposed by this Court, then the benefit of this order will not enure to the petitioner and the writ petition would stand automatically dismissed without any further reference to this Court and thereafter, it is open to the second respondent to proceed in accordance with law."

9. The writ petition is disposed of with the above directions. No costs. Consequently, the above MP is closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

To

1.The Chief Secretary to Union of India, Government of Puducherry,
Puducherry.

2.The Additional Commercial Tax Officer-IAC, Commercial Tax
Department, Puducherry.

+1 cc to Mr.V.Vasanthakumar, advocate,sr.42239

+1 cc to Govt.Pleader,sr.42105.

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