In the High Court of Judicature at Madras

Dated : 10.8.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.27981 of 2016 & WMP.Nos.24139 & 24140 of 2016

M/s.Sri Saai Raam Processors
by its Partner K.S.Chinnaiyan ...Petitioner

Vs

The Assistant Commissioner (CT),
Bhavani Assessment Circle,
Bhavani, Erode District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33842942561/2007-08 dated 6.10.2015 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has challenged the order of assessment dated 6.10.2015 for the year 2007-08.

3. The only ground, on which, the impugned order has been challenged is on the ground that the petitioner was not served with a pre-assessment notice.

4. On a perusal of the impugned order, it is seen that in the reference column, the notice dated 17.7.2015 has been mentioned. The order states that a notice was issued to the dealer/petitioner and objections were called for and that the dealer did not file their objections to the respondent.

5. Normally, when assessments are completed ex parte, the Assessing Officer would state that the pre-assessment notice was served to the dealer and it was received by them on a particular date and in spite of receipt of the notice, they have not filed their objections. However, in the impugned order, there is no such specific reference that the notice was served and also as to on what date, it was served on the petitioner. The petitioner filed a solemn affidavit before this Court stating that the notice has not been served.

6. The learned Additional Government Pleader submits that if that is the solemn affidavit given by the petitioner before this Court, then the petitioner may be granted one more opportunity.

7. The learned counsel for the petitioner further submits that the respondent was not correct in reversing the input tax credit and levying interest for the said reversal simultaneously on the same date and this is the another ground to interfere with the impugned order. Further, the interest levied is by referring to Section 24(3) of the Tamil Nadu General Sales Tax Act, 1959.

8. Thus, taking into consideration the solemn affidavit filed by the petitioner before this Court stating that they have not received the pre-assessment notice, this Court is inclined to pass the following order :

> "The petitioner is directed to treat the impugned proceedings as a show cause notice and submit their objections within a period of two weeks from the date of receipt of a copy of this order. In the said objections, the petitioner can raise all the issues including the issue relating to levy of interest. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Since this Court directed the impugned order to be treated as a show cause notice, the question of demanding tax, interest and penalty as quantified in the impugned order does not arise and it shall abide by the fresh assessment to be done in terms of the above directions."

9. The writ petition is accordingly disposed of. No costs. Consequently, the above WMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT), Bhavani Assessment Circle,
Bhavani, Erode District.

+ 1 cc to Mr.S.Ramanathan, Advocate SR 45887

rsy(co)
prk2/9

WP.No.27981 of 2016 and
WMP.Nos.24139 & 24140/2016