IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.09.2016

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.32476 of 2016
and
W.M.P.Nos.28175 of 2016

M/s.A.S.M.Dyeing,
rep. by its Partner Mr.K.Shanmugamsundaram. ...Petitioner

Vs.

The Assistant Commissioner CT,
Bhavani Taluk,
Erode District. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records relating to the order passed by the respondent in its proceedings, dated 10.08.2015, in TIN No.33092943604/2012-13, for the assessment year 2012-13 and to quash the same.

For Petitioner : Mr.Niranjan Ragagopalan

For Respondent : Mr.K.Venkatesh
Government Advocate (Tax)



O R D E R

Heard Mr.Niranjan Ragagopalan, learned counsel appearing for the petitioner, and Mr.K.Venkatesh, learned Government Advocate (Tax), accepting notice on behalf of the respondent, and with their consent, the Writ Petition itself is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). The petitioner has challenged

the order of assessment, passed by the respondent, dated 10.08.2015, for the assessment year 2012-13, on the ground that no pre-revision notice was received by the petitioner, though in the impugned order, it is stated that the dealers were served with a notice, they did not file objections.

3. 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 instant case, in the impugned order, there is no specific reference that the notice was served and also as to on what date, it was served on the petitioner. The petitioner has filed a solemn affidavit before this Court, stating that no notice was served on them, as stated in the impugned order, and the said statement is incorrect. The petitioner further states that the respondent has not assessed the returns correctly, as the respondent has only taken labour charges while other charges in connection with works contract have not been considered, and levied interest under Section 42 (3) of the TNVAT Act. Therefore, the assessment is not in accordance with provisions of the Act.

4. The learned Government Advocate for the respondent submits that, if that is the solemn affidavit given by the petitioner before this Court, then, the petitioner will be given one more opportunity to file their objections and after affording opportunity of hearing, assessment will be done in accordance with law.

5. 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 :-

i) 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.

ii) 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.

iii) Since this Court directed the impugned order to be treated as a show cause notice, the question of demanding tax and interest as quantified in the impugned order does not arise and it is shall abide by the fresh assessment to be done in terms of the directions issued hereinabove.

6. The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner CT,
Bhavani Taluk,
Erode District.

+1cc to Mr.G.R.Associates, Advocate, S.R.No.5259
+1cc to the Government Pleader, S.R.No.52718

writ Petition Nos.32476 of 2016

(CO)kgk
Cp(21/10/2016)