In the High Court of Judicature at Madras

Dated : 26.9.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.33728 to 33730 of 2016
and WMP.Nos.29106 to 29108 of 2016

M/s.Invicon rep.by its Joint
Managing Partner Thiru.
Sivarama Krishan Gavini ...Petitioner

Vs

1.The State of Tamil Nadu, rep.by
its Secretary to Government,
Department of Commercial Taxes &
& Registration, Fort.St.George,
Chennai-9.

2.The Commissioner of Commercial
Taxes, II Floor, Ezhilagam, Chepauk,
Chennai-5.

3.The Commercial Tax Officer Group VI,
Enforcement Wing (East),
Greams Road, Chennai-6.

4.The Assistant Commissioner (CT),
Madipakkam Assessment Circle,
Medavakkam, Chennai-100. ...Respondents

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records to the revision of assessment orders passed by the fourth respondent in his proceedings in TIN No: 33980990650/2013-14, 33980990650/2014-15 and 33980990650/2015-16 respectively dated 10.8.2016, 11.8.2016 and 12.8.2016 received by the petitioner on 18.8.2016, quash the same and direct the fourth respondent to afford an opportunity of personal hearing and pass fresh orders independently for the assessment years 2013-14, 2014-15 and 2015-16, without being influenced by the proposals of the third respondent.

For Petitioner : Mr.Md.Ibrahim Ali
For Respondents : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondents. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. In these writ petitions, the petitioner challenges the orders of assessment under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years 2013-14 to 2015-16. The assessment is only with regard to levy of penalty under Section 27(3)/27(4) of the said Act.

3. The place of business of the petitioner was inspected by the officials of the Enforcement Wing on 12.10.2015 and records were called for and verified including the purchase and sales bills and other connected records. During the course of inspection, on verification of the records, certain defects were pointed out. It appears that the petitioner accepted the defects and stated that inadvertently, they had paid tax at 5% of the entire turnover and while accepting the mistake, they paid the entire tax along with penalty, as advised by the officials of the Enforcement Wing on 6.1.2016.

4. When the notices were issued on 31.3.2016, the petitioner submitted their reply stating the above facts and further stated that when the notices were issued, the entire tax along with interest had already been paid fully on 6.1.2016 and that it is only due to inadvertence, they paid the entire tax at 5% of the entire turnover. Though this stand was taken in their reply, the fourth respondent completed the assessment and levied penalty holding that penalty is automatic.

5. In terms of Section 27(3) of the said Act, in making the assessment under Clause (a) of Sub-Section (1) of Section 27, the Assessing Authority may, if satisfied

that escape from assessment is due to wilful non-disclosure of assessable turnover by the dealer, direct the dealer to pay in addition to tax assessed, penalty, which have been quantified under Section 27(3)(a), (b) and (c) and Section 27(4) of the said Act.

6. The Proviso in the said Section states that no penalty shall be levied without giving the dealer a reasonable opportunity to show cause against such imposition. Though the said provision does not specifically provide for a personal hearing and it only provides for a show cause notice, which having been issued, there cannot be any allegation that the impugned orders are in violation of the principles of natural justice. However, the finding in the impugned order that the penalty is automatic under Section 27(3) of the said Act, is an incorrect finding, since the Assessing Officer should be satisfied that the escape from the assessment is due to wilful non-disclosure of assessable turnover. In the light of the said mistake committed by the fourth respondent while passing the impugned orders of assessment, this Court is inclined to interfere with the same and remit the matter for fresh consideration.

7. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the fourth respondent is directed to redo the assessment after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, the above WMPs are closed.

26.9.2016

Internet : Yes

To

1.The Secretary to Government of Tamil Nadu, Department of Commercial Taxes & & Registration, Fort.St.George, Chennai-9.

2.The Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chepauk, Chennai-5.

3.The Commercial Tax Officer Group VI, Enforcement Wing (East), Greams Road, Chennai-6.

4.The Assistant Commissioner (CT), Madipakkam Assessment Circle, Chennai-100.

T.S.SIVAGNANAM,J

RS

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