In the High Court of Judicature at Madras

Dated : 05.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.35248 of 2016 & WMP.No.30365 of 2016

M/s.J.P.Dye Chem (P) Ltd.
rep.by its Accounts Manager ...Petitioner

Vs

The Commercial Tax Officer,
Ayanavaram Assessment
Circle, Chennai-10. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No.33431002350/2014-15 dated 12.7.2016, quash the orders passed therein to reverse the input tax credit under Sections 19(2)(v) and 19(4) of Tamil Nadu Value Added Tax Act as illegal and direct the respondent to pass fresh orders by considering the request letter filed on 12.8.2016 under Section 84 of Tamil Nadu Value Added Tax Act and to provide an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromani
For Respondent : Mr.K.Venkatesh, GA

ORDER

Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final 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 and also under the provisions of the Central Sales Tax Act, 1956. In this writ petition, the petitioner has challenged the order of assessment under the State Act for the year 2014-15.

3. The petitioner's case is that the Assessing Officer was fully satisfied with the nature of the transaction done by the petitioner and except for one chemical, which was bought and locally sold, all other chemicals are imported by the petitioner and duly supported by documents to establish that those

chemicals were transferred to their branches. However, after the audit conducted by the office of the Accountant General, the respondent was compelled to issue the notice.

4. When this Court posed a question as to how it can be ascertained that the proceedings were initiated at the instance of the audit conducted by the Audit Wing of the Accountant General's office, the learned counsel for the petitioner has pointed out that both in the show cause notice and in the impugned order, below the tax payer identification number of the petitioner, on the left hand side, a number is given as A.S.No.5 and this number is given by the office of the Accountant General, which shows that the proposal in the show cause notice dated 25.5.2016 was not at the instance of the Assessing Officer, but solely on the ground of certain remarks made by the office of the Accountant General.

5. Nevertheless, the petitioner, though received the pre-revision notice, which was sent by registered post, failed to submit any reply. Hence, it cannot be stated that the respondent committed a grave error or there is a case of violation of the principles of natural justice. The petitioner did not avail the opportunity granted. Therefore, they cannot complain that their objections were not considered in this matter.

6. It is seen that after the assessment order was communicated to the petitioner, within 30 days, the petitioner filed an application dated 12.8.2016 under Section 84 of the State Act requesting to revise the order of assessment and in that, several factual details have been set out along with annexures 1 to 6, which reflect the nature of transaction apart from other details. This application is pending before the Authority and the same having not been disposed of, the petitioner is before this Court.

7. Considering the facts and circumstances of the case, this Court is of the view that the application under Section 84 of the State Act having been filed before the respondent, it is but appropriate for the respondent to dispose of the same on merits and in accordance with law and not merely reject it by a single line order stating that the order of assessment has been validly passed. The respondent shall take note of the petitioner's case that the notice proposing revision itself is based on the audit conducted by the office of the Accountant General and the assessment was completed ex parte upon failure of the petitioner to submit their objections. In such circumstances, the respondent shall consider the petitioner's application under Section 84 of the State Act effectively, peruse the documents, ascertain the genuineness of the transaction and then pass an order giving reasons.

8. In the light of the above discussions, instead of setting aside the impugned assessment order, the writ petition is disposed of with a direction to the respondent to consider the application made by the petitioner under Section 84 of the State Act dated 12.8.2016, afford an opportunity of personal hearing, verify all the particulars that may be furnished, seek clarification, if required, and thereafter pass an order on merits and in accordance with law. The above exercise shall be completed within a period of three weeks from the date of receipt of a copy of this order. Till the orders are passed in terms of the above direction, no coercive action shall be initiated against the petitioner for recovery of tax and penalty as assessed. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai-10.

+1cc to M/S.C.Bakthasiromani, Advocate Sr.57437

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srg 08/11/2016