In the High Court of Judicature at Madras

Dated : 20.10.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.36037 of 2016 & WMP.No.30965 of 2016

Sri Sakthi Traders, rep.by
its Proprietrix V.Rohini ...Petitioner

Vs

The Commercial Tax Officer,
Arakkonam Assessment Circle,
Arakkonam-8. ...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 relating to the assessment order TIN/33304302410/11-12 dated 29.7.2016 passed by the respondent, quash the same as arbitrary and illegal and direct the respondent to consider the objections filed by the petitioner and also provide the third party materials, which formed the basis for passing the impugned order and also an opportunity to cross examine the third party before passing any further order.

For Petitioner : Mr.N.Senthilkumar
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 dealer in ceramic tiles, registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The order impugned in this writ petition is an order of assessment under the provisions of the State Act for the year 2011-12.

3. On a perusal of the impugned order, it is seen that before the order was passed, a pre-revision notice dated 5.7.2016 was issued to the petitioner and an opportunity of personal hearing was granted by fixing the date of hearing as 20.7.2016. The said notice has been duly served on the petitioner on 9.7.2016. The petitioner does not dispute the fact that they received the pre-revision notice, but would contend that they appeared in person before the respondent and submitted a letter on 20.7.2016.

4. The respondent has given written instructions to the learned Government Pleader vide letter dated 20.10.2016 i.e today, from which, it is seen that the concerned officer has taken a specific stand that no such letter was given by the petitioner and the letter was sent by registered post on 16.8.2016 i.e. after the impugned assessment order has been passed.

5. In the absence of any proof to show that the petitioner handed over the letter on 20.7.2016 in person, this Court is not inclined to believe the stand taken by the petitioner. Accordingly, the said stand is rejected.

6. However, the petitioner would state that the petitioner was called upon to pay a sum of Rs.1,13,816/- in respect of two of the transactions since goods were still lying with them and the petitioner had paid the

amount. After the payment was made, the pre-revision notice was issued and the contention raised by the respondent is incorrect.

7. However, there are all factual issues and the petitioner should have agitated before the Assessing Officer. But, the petitioner miserably failed to avail the opportunity granted to them. Further, considering the fact that the petitioner is a sole proprietary concern, this Court is of the view that the petitioner can be granted one opportunity, however, on terms.

8. In the light of the above, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax to the respondent within a period of three weeks from the date of receipt of a copy of this order. On such payment, the petitioner is entitled to treat the impugned assessment order as a show cause notice and submit their objections within a period of two weeks therefrom. On receipt of the objections, an opportunity of personal hearing shall be granted to the petitioner and the assessment shall be redone in accordance with law. In case of any default in payment, this order will not enure to the benefit of the petitioner and the writ petition will stand automatically dismissed without any further reference to this Court. No costs. Consequently, the above WMP is closed.

20.10.2016

RS

T.S.SIVAGNANAM,J

RS

Internet : Yes

To
The Commercial Tax Officer, Arakkonam Assessment Circle, Arakkonam-8.

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20.10.2016