IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2016

Coram

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

W.P.No.38398 of 2016 &
WMP Nos.32883 to 32885 of 2016

M/s Golden Leathers
Rep. By its Partner D.Muralidharan ...Petitioner

Vs.

1.The Assistant Commissioner (CT)
Samanagar, Tirupattur.

2.The Commercial tax Officer (FAC)
(Assessment Commissioner of above
Full Additional charge)
Samanagar, Tirupattur.

3.The Joint Commissioner (CT)
Vellore Division,Vellore.
... Respondents

Prayer :

This Writ Petition is filed under Article 226 of the Constitution of India, seeking for issuance of Writ of Certiorarified Mandamus to call for the records of the second respondent in TIN:33304620473/ 2014-15 dated 06/10/2016 and the consequential order of the first respondent in TIN:33304620473/2014-15 dated 06/10/2016, quash the same as arbitrary, unreasonable and ultravires of the statutory provisions of the Tamil Nadu Value Added Tax Act,2006, and further direct the respondents to refund the amount of Input Tax Credit carried forward in view of Section 19(18) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner :Mr.V.Sundareswaran

For Respondents :Mr.K.Venkatesh
Government Advocate

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O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondents. With the consent of the learned counsel appearing on either side, the Writ Petition itself is taken up for disposal.

2.The petitioner is a registered dealer in hides and skins under the provisions of Tamil Nadu Value Added Tax Act, 2006, [TNVAT Act], and Central Sales Tax Act, 1956 [CST Act], on the file of the first respondent. In this Writ Petition, the petitioner has challenged the order of assessment dated 06.10.2016, for the assessment year 2014-15.

3.The second respondent issued a pre-revision notice dated 14.01.2016, stating that on scrutiny of the monthly returns for Form-I for the year 2014-15, from April 2014 to March 2015, it was found that there were sales suppression. The details pertaining to the Input Tax Credit at end of previous months, Description of the goods, Commodity Code, Value, Rate of tax and Input Tax Credit forwarded at the end of the month, were mentioned in the Notice. After giving those details, the first respondent proposed to reverse the Input Tax Credit of Rs.16,26,753/-, shown as excess when compared to the stock shown in Annexure V to the return for the month of April 2014. The first respondent also proposed to levy penalty under section 27 (2) of the VAT Act. The petitioner was granted fifteen days time to submit their objections. The petitioner by representation dated 08.02.2016, requested one month time to submit necessary details. The said representation was sent by a registered post, received by the Office of the first respondent on 26.2.2016, as evidenced by the postal acknowledgement card. Thereafter, the petitioner submitted their objections on 07.3.2016, wherein they have also sought for an opportunity of personal hearing, so that they can come over and explain in person with original records. On receipt of the objection dated 07.03.2016, the first respondent issued a notice dated 30.03.2016. In the notice, the first respondent stated that though the stand taken by the petitioner was reasonable to some extent, the petitioner have not worked out the figures and reconciled the issues with facts and figures and as the reply is general in nature, it cannot be accepted in full. After making such an observation, the first respondent called upon the petitioner to reconcile the facts and figures with full facts, within ten days. On receipt of the said notice, the petitioner submitted a representation on 13.4.2016, wherein among other things, they stated that their Auditor requires one month time to produce all the records and explain the transaction to the first respondent. As agreed to, the petitioner submitted another representation dated 12.5.2016, enclosing the working sheet and requested the first respondent to peruse the same and if there is any doubts, in the working sheet, the petitioner volunteered to come and appear in person before the first respondent and explain the transactions. Though such a request was made on 12.5.2016, the same appears to have not been considered by the first respondent and the assessment order has been passed on 06.10.2016, which in fact is a verbatim reproduction of the notice dated 30.03.2016, except for the last paragraph.

4.In the considered view of this Court, if the Assessing Officer was of the view that the part of the objections raised by the petitioner were reasonable, then it would have been appropriate for the first respondent to have issued a notice to the petitioner to appear in person along with the records and clarify all the issues. If that had been done, the present Writ Petition itself could have been avoided. At this juncture, this Court would point out that the orders of assessment are not to be passed for statistical purpose but to ensure that the correct rate of tax and the correct quantum of tax is recovered from the dealer. By passing the orders such as the one which is impugned notice in this Writ Petition, no purpose has been served, as it can at best be taken for statistical purpose that the Assessing Officer has completed the assessment. On account of the manner in which the impugned order has been passed, the matter is before this Court and the order has been challenged. Therefore, the Assessing Officer who is a Statutory Authority under the Act, is required to independently apply his mind to all the issues and pass such an order and it would be appropriate for the Assessing Officer to call upon the assessee and direct him to explain all the transactions and after considering the records produced by the dealer the Assessing Officer should pass a detailed order. This is sufficient to hold that the impugned order has been passed in violation of the principles of natural justice.

5.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, permit the petitioner to produce all the records and call upon the petitioner to explain and reconcile the facts and figures and thereafter, redo the assessment by passing the reasoned order. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar(CSIV)

True Copy

Sub-Assistant Registrar

rpa
To

1.The Assistant Commissioner (CT)
Samanagar, Tirupattur.

2.The Commercial tax Officer (FAC)
(Assessment Commissioner of above
Full Additional charge)
Samanagar, Tirupattur.

3.The Joint Commissioner (CT)
Vellore Division,Vellore.

+1 cc to M/s.V.Sundareswaran Advocate sr 63423
+1 cc to the Governemnt Pleader sr 63114

W.P.No.38398 of 2016

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