IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.39482 of 2016 &
WMP No.33778 of 2016

Gokul Raam Leathers .. Petitioner

..Vs..

The Assessment Officer (CT)
Pallavaram Assessment Circle
No.32 & 33, 2nd street, Sripuram
Chrompet, Chennai 600 028.
.. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN:33190882202/2014-15 and quash the order dated 26.08.2016, as the same was passed without granting reasonable time to the petitioner and therefore contrary to the principles of natural justice and to further direct the respondent to grant reasonable opportunity to the petitioner to file objections and documents.

For Petitioner : Mr.P. Rajkumar

For Respondent : Mr.K.Venkatesh
Govt.Advocate

सत्यमेव जयते

O R D E R

Heard Mr.P. Rajkumar, learned counsel for the petitioner and Mr.Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. By consent, the Writ Petition itself is taken up for final disposal.

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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] and effecting local and inter-state purchases of wet blue and other raw materials and after due processing converts the wet blue into finished leather.

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3.In this Writ Petition, the petitioner has challenged the order of assessment passed by the respondent under the TNVAT Act, for the year 2014-15. The order has been challenged mainly on the ground that it is in violation of principles of natural justice, as the petitioner was not given sufficient time to respond to the pre-assessment notice, as only three days was granted.

4.The petitioner was issued with a pre-assessment notice dated 26.2.2016, wherein the respondent proposed to revise the total and taxable turnover of the petitioner for the relevant year on three grounds namely excess claim of ITC, Sales Suppression and depreciation. Apart from the above, there was also a proposal to levy penalty under section 64 of the TNVAT Act. After about two months, another revised pre-assessment notice dated 06.04.2016, was issued thereby revising the earlier pre-assessment notice dated 26.02.2016, on the same three heads. The petitioner submitted their reply to both those notices. After taking note of the reply, the respondent issued third revised property assessment notice dated 09.08.2016. The proposal under the head, Wrong Claim of ITC, reversal of ITC for Interstate Sales, Sales Return and Sales Suppression.

5.The respondent had granted only three days time to respond to the notice. Immediately on receipt of the notice, the petitioner appeared before the respondent and able to produce the documents with regard to the wrong claim of ITC pertaining to certain transactions. After perusal of the same, the respondent found that the documents were in order and the proposal was dropped in the impugned processing. However, in respect of other heads, the Assessing Officer confirmed the proposal in the pre-revision notice.

6.The contention of the learned counsel for the petitioner is that three days time was not sufficient for the petitioner to get the records and had the respondent given sufficient time, the petitioner would have been able to substantiate their case by producing the document.

7.In the impugned assessment order, the computation of tax is on the following lines.

(1) Reversal of ITC due	:Rs.480407.00
(2)Reversal of ITC (Interstate Purchases)	:Rs. 49000.00
(3)Reversal of ITC (Interstate Sales)	:Rs. 2633.00
(4)Tax Due on Sales return	:Rs.106328.00
(5)Interest	:Rs. 33036.00
(6)Due on Sales suppression	:Rs.361152.00
Total Due	:Rs.1032556.00

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Paid	:Rs.Nil
Balance	:Rs.1032556.00
Penalty Due u/s 27(3) @ 50%	:Rs. 180576.00
Penalty Due u/s 27(4) @ 50%	:Rs. 264703.00
Paid	:Rs. Nil
Balance	:Rs. 445279.00

The petitioner disputes the order in so far as it relates to Sl.Nos. 1,4, 5 & 6. So far as Sl.Nos.2 & 3, the petitioner admits their liability.

8.In the light of the above, the impugned order is confirmed in so far as the findings rendered in respect of the reversal of ITC, as mentioned in Sl.Nos.2 & 3 alone.

9.So far as the purchases are concerned, the respondent in the impugned order has verified the records and found the same to be in order. Therefore, the said finding does not require any indulgence in respect of the dispute which the petitioner now has raised, which pertains to Sl.Nos. 1,4, 5 and 6, this Court is of the view that sufficient time should have been granted to the dealer to produce the documents and contest the proposal. According three days time, in the considered opinion of this Court, is inadequate and hence for that reason, this Court is inclined to interfere with the impugned order in respect of the above heads, as well as the consequential penalty which has been levied in the impugned order.

10.Accordingly, the Writ Petition is partly allowed, the impugned order in so far as it pertain to Sl.Nos. (1),(4) (5) & (6) viz. Reversal of ITC due, Tax Due on Sales return, Interest, tax Due on Sales suppression and penalty under section 27(3) and 27(4) of the Act are set aside and the matter is remanded to the respondent for fresh consideration and the petitioner is granted fifteen days time from the date of receipt of a copy of this order to submit relevant documents and on receipt of the documents and objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law, in respect of the above mentioned heads. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

The Assessment Officer (CT)
Pallavaram Assessment Circle
No.32 & 33, 2nd street, Sripuram
Chrompet, Chennai 600 028.

+1cc to the Government Pleader Sr.67194

W.P.No. 39482 of 2016

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srg 10/12/2016

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