IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2016

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.40086 of 2016
&
WMP.Nos.34132 & 34133 of 2016

Tvl.Mayurply Industries Pvt. Ltd.,
rep.by its Authorized Signatory ... Petitioner

Vs

The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai. ... 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 Assessment Order in TIN.33950523757/2014-15 dated 12.8.2016 and quash the same as illegal, unconstitutional and in violation of principles of natural justice in respect of enhancement of penalty as against his own notice and also direct the respondent to grant an opportunity to the petitioner as provided under Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006 to produce their books of accounts and to verify the same before passing fresh orders of assessment.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Mr.K.Venkatesh,
Government Advocate

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. In this writ petition, the petitioner has challenged an order of assessment under the Tamil Nadu Value Added Tax Act, 2006 for the year 2014-15.

3. It is an admitted fact that the petitioner did not file their objections to the pre-revision notice dated 27.5.2016, in which, the respondent pointed out three defects with a proposal to levy penalty at 50% of the input tax credit proposed to be reversed under Section 27(4) of the said Act. However, while passing the impugned order, the respondent levied 100% penalty under Section 27(4) of the said Act, while confirming the proposal made in the show cause notice. Only thereafter, the petitioner realized their mistake and immediately sent a representation on 12.9.2016 by furnishing the details with regard to the allegations, which were made in the pre-revision notice and the findings, which were rendered in the impugned assessment order.

4. The learned counsel for the petitioner, by referring to the representation dated 12.9.2016, has submitted that all the issues, which were raised in the pre-revision notice, do not survive for consideration in the light of the details submitted by the petitioner in the said representation. While admitting the mistake committed by the dealer, the learned counsel has further submitted that if the details furnished by the petitioner are perused, then the Assessing Officer will be convinced that there is no case for revision of assessment.

5. The said representation has been received by the respondent on 15.9.2016, as could be seen from the signature affixed on the said representation. Though the said representation does not specifically state that it is a petition under Section 84 of the said Act for revision of the assessment order, in the penultimate paragraph of the said representation, the petitioner has requested the respondent to modify the error apparent on the face of the records. Thus, the respondent can very well consider the said representation as a petition under Section 84 of the said Act and proceed in accordance with law.

6. In the light of the above, while considering the fact that the representation dated 12.9.2016 is pending before the respondent, at this juncture, this Court need not set aside the impugned order. But, it would suffice to direct the respondent to treat the representation dated 12.9.2016 as a petition under Section 84 of the said Act.

7. Accordingly, the writ petition is disposed of with a direction to the respondent to treat the representation of the petitioner dated 12.9.2016 as a petition under Section 84 of the said Act, afford an opportunity of personal hearing to the petitioner, verify the details furnished by them, call for the records or documents, which may be required and thereafter, pass

a speaking order on merits and in accordance with law. The above exercise shall be completed within a period of 10 days from the date of receipt of a copy of this order. Till then, no coercive steps shall be taken against the petitioner for recovery of tax and penalty as quantified in the impugned order of assessment. However, the attachment of the petitioner's bank account shall continue till orders are passed by the respondent in terms of the above directions. But, the respondent shall not be entitled to withdraw any money from the petitioner's bank account. No costs. Consequently, the above WMPs are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

RS

To

The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai.

+1cc to Mr.A.Ravichandran, Advocate, S.R.No.60460
+1cc to the Special Government Pleader(T), S.R.No.65977

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MG(CO)
CA(17/11/2016)