In the High Court of Judicature at Madras

Dated : 02.12.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.41507 of 2016 & WMP.Nos.35483 & 35484 of 2016

Tvl.H.R.Leathers, rep.by its Partner ...Petitioner

Vs

The Assistant Commissioner (CT),
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 33140524639/2013-14 dated 23.12.2015, quash the same as illegal and unconstitutional and direct the respondent to grant an opportunity to the petitioner as provided under Section 27(1)(a) of the TNVAT Act 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.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader appears for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has challenged an order of assessment for the year 2013-14.

3. The only ground, on which, the impugned order has been challenged, is by contending that no show cause notice was served and that no order of assessment was served on the petitioner.

4. To test the correctness of the said contention, the learned Additional Government Pleader was directed to get instructions.

5. Accordingly, the written instructions were given, from which, it is seen that the show cause notice dated 28.8.2015 not only for this particular assessment year i.e. 2013-14, but also for the assessment years 2010-11, 2011-12, 2012-13 and 2014-15, were sent by registered post to the following addresses :

"1. Tvl.H.R.Leathers,
Mrs.M.B.Praveen & B.Rameez Baukher,
No.28, Naval Hospital Road,
Periamet, Chennai-3.

2. Tvl.H.R.Leathers,
No.19, 1st Floor, Wuthucattan Street,
Periamet, Chennai-3."

6. The second address given above is the address given in the writ petition. The above notices were returned with the endorsement ‘unclaimed’. Therefore, it is deemed that the petitioner had notice. Further, it is stated that the notices were also sent by registered post, which were not returned to the Department. This shows that service is deemed to have been effected on the petitioner. Since no reply was given by the petitioner, the notices were affixed on 07.12.2015. For the same also, the petitioner did not respond and it was found that the petitioner’s business premises was closed and one of the partners Tmt.Parveen W/O Mr.Bilal, started a new business from 25.1.2014 in the name of M/s.Haza Leather Exports. Thus, the petitioner is a chronic defaulter and the impugned assessment order cannot be quashed on the grounds raised by the petitioner.

7. Taking note of the fact that the petitioner has been evading payment of tax, with a view to grant one more opportunity, the following directions are issued :

(i) The petitioner is directed to pay 15% of the tax 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 proceedings as a show cause notice and file their objections within two weeks therefrom.

(ii) On receipt of the objections, the respondent shall afford an opportunity of personal hearing and and redo the assessment in accordance with law.

(iii) On the petitioner complying with the condition of payment of 15% of the tax, the respondent shall not demand the balance amount of tax and penalty as quantified in the impugned assessment order, since this Court has directed the proceedings to be treated as a show cause notice and

(iv) This order will not enure to the benefit of the petitioner, if the petitioner fails to make payment of 15% of the tax within the time stipulated.

8. With the above directions, the writ petition is disposed of. No costs. Consequently, the above WMPs are closed.

Sd/-

Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner (CT), Vepery Assessment Circle, Chennai.

2 ccs to Spl.Government Pleader, Sr. 71992, 71610

1 cc to M/s.A. Ravichandran, Advocate, sr. 71573

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AD (CO)
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