In the High Court of Judicature at Madras

Dated : 01.12.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.42144 of 2016
and W.M.P.No.36060 of 2016

M/s.Sun Decoration Centre rep.by
its Proprietor, Mr.S.P.Sivakumar ...Petitioner

Vs

The Commercial Tax Officer
Kothawalchavadi Assessment
Circle, Chennai-1. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN/33730201353/2013-14 Audit Slip 14, quash the order dated 30.6.2016 as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar
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 registered dealer 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. In this writ petition, the petitioner challenges an order of assessment passed by the respondent for the year 2013-14.

3. The petitioner filed returns for the relevant year and the then Assessing Officer of the petitioner issued a notice dated 31.7.2014, which was received by the petitioner on 25.8.2014. On receipt of the same, the petitioner submitted their objections on 1.9.2014 and further objections on 17.12.2014. Along with the objections dated 17.12.2014, the petitioner filed a statement of accounts showing the details of taxable and exempted purchases as well as taxable and exempted sales during the year 2013-14. However, no orders have been passed either confirming or dropping the proposal. On and after 31.10.2014, the dealer is deemed to have been assessed under Section 22(4) of the said Act. Therefore, if the respondent proposes to reopen the assessment without notice to the dealer, the same cannot be done.

4. It is seen the respondent, by referring to the notice dated 31.7.2014 and the only objection given by the petitioner, passed the impugned order. Though the objections dated 1.9.2014 have been considered, the statement of accounts furnished by the petitioner along with the objections dated 17.12.2014 has not been considered. In any event, after 31.10.2014, the respondent could not have relied upon the notice dated 31.7.2014, as the

dealer should be deemed to have been assessed for the relevant year. Therefore, the respondent ought to have issued a fresh notice and then proceeded in accordance with law.

5. This, being an inherent defect, would render the impugned order unsustainable. However, the only issue raised in this writ petition is non compliance of the show cause notice. Hence, this Court is inclined to direct the petitioner to treat the impugned proceedings as a show cause notice.

6. Accordingly, the writ petition is disposed of with a direction to the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Since this Court directed the impugned proceedings to be treated as a show cause notice, no coercive action shall be initiated against the petitioner for recovery of tax and penalty as quantified in the impugned order. No costs. Consequently, the above WMP is closed.

01.12.2016

Internet : Yes

To
The Commercial Tax Officer, Kothawalchavadi Assessment Circle, Chennai-1.

RS

T.S.SIVAGNANAM,J

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