In the High Court of Judicature at Madras

Dated: 23.12.2016

Coram

The Honourable Mr.JUSTICE RAJIV SHAKDHER

Writ Petition No.44221 of 2016
and WMP Nos.38052 and 38053 of 2016

Tvl.Alwahid Leathers,
represented by its Proprietor
Chennai-3. .... 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 Writ of Certiorarified Mandamus to call for the records of the respondent in his order of Assessment in TIN 33530522727/2014-15 dated 28.10.2016 and to quash the same as illegal and unconstitutional and direct the respondent to pass fresh orders after considering the Input Tax Credit available in their credit.

For Petitioner : Mr.R.Ganesh Kanna
For Respondents: Mr.K.Venkatesh,G.A.

O R D E R

1. Issue Notice. Mr.K.Venkatesh, accepts notice on behalf of the respondent.

2. With the consent of counsels for parties, the Writ Petition is taken up for hearing and final disposal.

3. By virtue of this Writ Petition, challenge is laid to the order dated 28.10.2016, passed by the Revenue.

4. The impugned order has been passed, based on the best judgment principle, in exercise of powers under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (in short the 2006 Act). The Assessment Year (AY) in issue is AY 2014-2015.

5. Counsel for the petitioner says that a best judgment assessment can only be made, in exercise of power under Section 22(4) of the 2006 Act.

5.1. Furthermore, it is stated that the petitioner has only effected inter-state sales, against 'C' Forms, under Section 8 (1) of the Central Sales Tax Act, 1956, to the tune of Rs.2,73,23,618/- during the relevant assessment year. In other words, that the said inter-state turnover was reported to the concerned authorities and, more importantly, the petitioner says that, in so far as the 2006 Act, 'nil' turnover returned was conveyed in the prescribed manner. Therefore, it is the petitioner's case that no local sales was effected under the 2006 Act. Thus, the petitioner's stand is that it could not have availed of Input Tax Credit (in short ITC), for the relevant assessment year, since, no local sales were effected.

5.2. Counsel for the petitioner, therefore, contends that the impugned order is erroneous, as it proceeds on the basis that a claim for ITC was made while ignoring the fact that there was no actual availment of ITC.

6. Mr.K.Venkatesh, on the other hand, says that the petitioner could have explained the purported discrepancy by responding to the show cause notice dated 28.06.2016, which was issued by the respondent.

6.1. Learned counsel further says that the petitioner, neither responded to the show cause notice, nor availed of the opportunity granted by the respondent of a personal hearing in the matter, on 06.07.2016.

6.2. It is, therefore, the submission of the learned counsel for the respondent that the best course open to the petitioner would be to prefer an appeal.

7. In rejoinder, counsel for the petitioner says that no doubt that the petitioner could avail of the appellate remedy, however, since, the error in the impugned order is apparent on the face of the order, it could be corrected by the Writ Court, in exercise of power under Article 226 of the Constitution of India.

8. I have put to the learned counsel for the petitioner as to whether, for the very same purpose, remedy by way of rectification petition, under Section 84 of the 2006 Act is available to the petitioner.

8.1. Counsel for the petitioner concedes that such a remedy is available.

9. Therefore, having regard to the fact that there are obvious errors in the impugned order, which includes invocation of a wrong provision for the purpose of passing of the impugned order, ostensibly on the basis of best judgment, I am inclined to dispose of the captioned petition with liberty to the petitioner to prefer a rectification petition under Section 84 of the 2006 Act.

10. Accordingly, if, the petitioner prefers a rectification petition within a period of one (1) week from the date of receipt of a copy of the order, the respondent will pass a speaking order on the rectification petition.

10.1. In case, the rectification petition is preferred by the petitioner, within the time frame set out above, no coercive measures will be taken against the petitioner, pending disposal of the rectification petition.

11. Needless to say, that the respondent will act with due expedition, and dispose of the rectification petition, if filed, within eight (8) weeks from the date of its institution.

12. The Writ Petition is disposed of accordingly, with the aforesaid directions leaving the parties to bear the costs. Resultantly, connected Miscellaneous Petitions stand closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sl

To

The Commercial Tax Officer,
Vepery Assessment Circle,
Chennai.

+ 1 cc to Special Government Pleader Sr.76315

Writ Petition No.44221 of 2016
and WMP Nos.38052 and 38053 of 2016

EV(CO)
Eu 23.1.17