IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

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THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

W.P.No.3032 of 2017
And
W.M.P.No.2962 of 2017

Annai Agencies,
Represented by its Proprietor,
S.Muniammal ... Petitioner

Vs.

The Deputy Commercial Tax Officer
Ranipet. ... Respondent

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records on the files of the Respondent herein in TIN:33624284289/2015-16, dated 29.11.2016 and the consequential rejection order in TIN:33624284289/2015-16, dated 04.01.2017, quashing the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

1.Issue Notice. Mr.K.Venkatesh, learned Government Advocate, accepts notice on behalf of the respondents. With the consent of the learned counsels for parties, the writ petition is taken up for hearing and final disposal.

2.The record shows that a pre-assessment notice was issued to the petitioner.

2.1.Via, the said notice, which is dated 14.09.2016, the petitioner was informed that there was a proposal in the offing to impose tax to the tune of Rs.1,52,642/-.

2.2.Furthermore, the petitioner was also put to notice that penalty in the sum of Rs.2,28,963/- was proposed to be imposed. The petitioner was given 15 days time to file objections. The reason set out in the pre-assessment notice qua the aforementioned proposals was as follows:

> ***"On Verification of the purchase details from other dealers Annexure-II available in the intranet website of the Department, it is found that purchases to the tune of Rs.10,63,999/- made by the dealers during the year 2015-16 which includes taxable goods also. Thus, they are liable to pay tax as per section 3(1) of the Act by filing monthly returns in in Form I. But they failed to file monthly returns for the above year till date."***

3.In view of the above, for the assessment year in issue, i.e., 2015-16, the respondent proposed to determine total and taxable turnover based on best judgment under Section 22 (4) of the Tamil Nadu Value Added Tax Act, 2006.

4.Apparently, the petitioner wrote back to the respondent vide letter dated 02.11.2016, that he needed to reconcile the information and details, with reference to his accounts and therefore, would require time till 30.11.2016.

5.The respondent, however, vide, the impugned assessment order dated 29.11.2016, confirmed the proposal. While doing so, the respondent, un-mindful of the fact that time had been sought to present reconciled details, noted that the petitioner had filed objections, which were not accepted.

6.It appears, that thereafter, the petitioner supplied details to the respondent under the cover of communication dated 26.12.2016. Via, this communication, the petitioner requested the respondent to treat the said communication as an application under Section 22(6)(a) of the Tamil Nadu Value Added Tax Act, 2006 and carry out a re-assessment, after cancelling the original assessment order.

6.1.The respondent, however, summarily rejected the application. No reasons were supplied in the order dated 04.01.2017.

6.2.It is, in this background, that the instant writ petition has been filed.

7.Learned counsel for the petitioner says that the respondent has failed to grant adequate opportunity to the petitioner to present its case. It is further submitted that the order dated 04.01.2017, has been passed without assigning any reasons.

8.Mr.Venkatesh, who appears for the respondent, cannot, but submit that the order dated 04.01.2017, is bereft of reasons.

9.I have heard the learned counsels appearing for the parties and perused the record.

10.According to me, no doubt the record reveals that the petitioner was given 15 days to file its objection and that he failed to file its objections within the given time frame. The fact remains that the petitioner sought time to present reconciled details to the respondent. This request was made vide communication dated

02.11.2016. Via, this communication, time was sought till 30.11.2016.

10.2.The respondent failed to deal with the request, whereby, accommodation was sought and instead, passed the impugned order of assessment on 29.11.2016.

11.Furthermore, when, an application was made for consideration of material, based on which, the respondent was requested to pass a fresh order, after cancelling the original assessment, the said application was dismissed summarily without assigning any reasons.

12.According to me, the manner, in which, the respondent has acted is in complete violation of principles of natural justice. The respondent was required to deal with the request for adjournment in the first instance and, only if, the respondent had rejected the request for adjournment, could he have proceeded to pass an order of assessment.

13.The injury to the petitioner was compounded with his request conveyed via communication dated 29.11.2016, being rejected without assigning any reasons. Therefore, for the foregoing reasons, I am inclined to agree with the learned counsel for the petitioner that the assessment order dated 29.11.2016, and the subsequent order dated 04.01.2016, needs to be set aside.

13.1.It is ordered accordingly.

13.2.The respondent, however, will be at liberty to pass a fresh order of assessment.

13.3.While doing so, the respondent will afford an opportunity of personal hearing to the petitioner.

13.4.Needless to say, the fresh order, if any, passed will be a speaking order. A copy of the order passed shall be supplied to the petitioner.

14.The writ petition is disposed of, in the aforementioned terms. Consequently, the connected pending application is also closed. However, there shall be no order as to costs.

08.02.2017

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Index: Yes/ No
Internet: Yes/ No

To

The Deputy Commercial Tax Officer
Ranipet.

RAJIV SHAKDHER, J.

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