IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.7.2017

CORAM :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.4440 of 2017
&
WMP.No.4647 of 2017

M/s.Aswins Home Special, rep.by
its Partnership Firm Partner of,
KRV.Ganesan ...Petitioner

Vs

The Assistant Commissioner (CT)
Commercial Taxes Building,
Ariyalur-621704. ...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 relating to the order No.33793602916/2014-15 dated 16.12.2016 passed by the respondent, quash the same and consequently direct the respondent to pass a fresh assessment order based on the documents to be produced by the petitioner on merits.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh, GA

ORDER

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 is before this Court challenging an order, which is a revision of assessment under Section 27(1) of the said Act for the assessment year 2014-15.

3. On a cursory reading of the impugned order clearly shows that the Assessing Officer has abdicated her powers as an Assessing Officer and passed the impugned order in most arbitrary and cryptic manner. The impugned order is a classic example as to how an Assessing Officer should not act. The objections filed by the dealer have been brushed aside and rejected as devoid of merits without any reasons. An order devoid of reasons is arbitrary and in violation of the principles of natural justice and also liable to be outrightly set aside.

4. As already mentioned, the respondent has not even made an endeavor to consider the merits of the objections raised by the petitioner. Furthermore, there is no valid reason for levying penalty under Section 27(3) of the said Act, as the said provision would arise only when there is an escapement of turnover and existence of evidence for evasion. The respondent has not pointed out that there was any documentary evidence in her hands to levy penalty. Further, she has not recorded satisfaction of mens rea being committed by the petitioner herein. Furthermore, there is no finding that there is willful non disclosure of assessable turnover.

5. The disputed turnover has been reported in the returns and the dealer has claimed exemption. The turnover has been disallowed by the respondent for want of certain records of purchase and sale and on that ground, the exemption already granted by the respondent was disallowed. Thus, there can be no levy of penalty. Furthermore, the question of applying current year defects to the previous years would arise only if there are similar facts in the previous years. Thus, it appears that the re-assessment proceedings are solely based on surmises and conjectures.

6. In addition to that, the learned counsel for the petitioner has brought to the notice of this Court that the tax payer identification number also has not been correctly noted.

7. For all the above reasons, the impugned order is liable to be interfered with.

8. Accordingly, the writ petition is allowed and the impugned order is quashed. The matter is remanded to the respondent for fresh consideration only with regard to the determination of the alleged escaped taxable turnover. The penalty, which was levied under Section 27(3) of the said Act,

is set aside in full and while redoing the assessment, the respondent cannot impose any penalty. The respondent is directed to redo the assessment, after considering the petitioner's objections, by affording an opportunity of personal hearing and pass a speaking order on merits and in accordance with law. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

RS

To
The Assistant Commissioner (CT) Commercial Taxes Building, Ariyalur-621704.

WP.No.4440 of 2017&
WMP.No.4647 of 2017

PA(CO)
EU 1.08.17