IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.4444 of 2017
and
W.M.P. No.4651 of 2017

M/s.Aswins Home Bakers & Sweets,
Rep.by its Sole proprietor,
V.Rengarajan S/o.R.Varadarajan,
No.225 Da/17C, upstairs Vadakku Mathavi Road,
Tillai Nagar, Perambalur- 621 212.
... Petitioner

Vs

The Assistant Commissioner(CT),
Commercial Taxes Buildings,
Ariyalur- 621 704.
...Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorarified Mandamus calling upon the records of the impugned order of the respondent made in order No. 33163603311/2010-2011, dated 16.12.2016 and quash the same and consequently permit the petitioner to produce the documents and records before the respondent directing the respondent to pass fresh order on merits.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh
Government Advocate.

O R D E R

Heard both sides. 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.

3. The petitioner has impugned the order of assessment dated 16.12.2016 in respect of the assessment year 2010-11. On a perusal of the impugned order, it is seen that the proposal made in the show cause notice dated 31.08.2016 was a result of surprise inspections conducted on 06.02.2015 to 10.02.2015, in the place of business of the petitioner by the Enforcement Wing Officers.

4. The respondent has referred to and relied upon the statement recorded by the Enforcement Wing Officers from the petitioner and proposed that at the time of surprise inspection, several defects were found, but the petitioner refused to sign in the statement and therefore, the statement was sent to the petitioner by registered post. But there was no response from the petitioner. Therefore, the respondent stated that the petitioner has failed to produce the purchase and sales bills and other documents for claiming exemption and therefore, proposed to reject the exemption claim and revised the assessment under Section 27(1)(a) of the Act for the said year. Apart from the same, there was also a proposal to levy penalty under Section 27(3)(c) of the Act.

5. The petitioner's case is that the respondent cannot be solely influenced and guided by the report of the Enforcement Wing Officers and cannot mechanically follow the same. It is submitted that, according to the Enforcement Wing Officer, the food items were manufactured by the petitioner during the assessment years 2010-11 to 2013-14 in an unregistered place at Dheeran Nagar and this view is not supported by any documentary evidence and without physically verifying the place of business at Vadakku madhavi road, it has been stated that the petitioner and their sister concern had manufactured the food items during the assessment year 2011-12 to 2014-15.

6. It is the case of the petitioner that the place of manufacture at Dheeran nagar is no way connected with the petitioner and it is a registered place of business of another firm which have been given a registration certificate with effect from 06.06.2014. Thus, it is contented that there is no evidence in the hands of the respondent that the goods were manufactured in the said unregistered place or any other place.

7. The reasons given by the petitioner for not signing the statement prepared by the Enforcement Wing Officers is due to the fact that the petitioner was not explained as to the basis of their findings recorded in the statement. The petitioner claims to have maintained records and details about the van and they are ready to produce the same before the respondent.

Therefore, the petitioner seriously disputed the finding recorded by the Enforcement Wing Officer and submits that the respondent/Assessing Officer should independently take a decision in the matter.

8. The records, which were summoned by the respondent, are voluminous and within 45 days, the petitioner could not produce the same and hence, requested for extension of time, which was rejected. The petitioner would state that they have now gathered all the documents and ready to produce the same before the respondent. Further, the majority of the goods purchased by the petitioner are fully exempted, as they are included in the fourth schedule under the Act and the goods are exempted under Section 50 of the Act and those exemption does not depend upon the fact whether the dealer is a registered dealer or not.

9. Almost all purchase invoices are available with the petitioner and they are ready to submit them before the respondent. In pages 26 and 27 of the affidavit filed in support of the writ petition, the petitioner has listed out the commodities which are fully exempted from tax and also commodities which enjoy conditional exemption. Apart from that, in page 28 of the affidavit, the petitioner has filed the list of the registered dealers in the State from whom they have effected purchase of goods included in part B of the first schedule.

10. Further, it is submitted that the question of levying penalty would not arise as there is no proof for evasion as a result of inspection and there is no evidence available with the respondent for establishing the evasion from paying tax. Mere non production of records which are voluminous, within a shord period of time will not said to be a wilfull non disclosure of the assessable turnover, as there was no turnover which escaped assessment to tax. When the respondent disallowed the exemption granted by him already on the sole ground of non production of records, the same cannot be a ground to impose penalty. Further, as the petitioner has disclosed the entire turnover in their monthly returns for all the assessment years, there is no ground for non disclosure and consequential levy of penalty is not sustainable.

11. With the above facts, the petitioner pleads for one more opportunity to go before the Assessing officer to produce all the voluminous records and establish that there is no non disclosure, much less wilful non disclosure on the part of the petitioner.

12. Heard learned Government Advocate on the above submissions. Considering the factual positions pleaded by the petitioner, this Court is of the view that one more opportunity can be granted to the petitioner to go before the Assessing

Officer. This conclusion is arrived at primarily due to two reasons. Firstly, the revision notice was issued by the respondent solely based upon the inspection conducted by the Enforcement Wing Officers and the statement prepared by those officers has not been signed by the petitioner. The second reason being that the petitioner has stated that the records which are to be produced are voluminous and they wanted reasonable time which was stated to have been refused.

13. The petitioner has given the nature of goods which are fully exempted, conditionally exempted and also discloses the names of the registered dealers in the State from whom purchases have been effected and those goods are included in part B of the first schedule. Thus, for the above reasons, this Court is convinced that the assessment can be re-done by remanding the matter to the respondent for fresh consideration.

14. In the result, the writ petition is disposed of by directing the petitioner to treat the impugned assessment order dated 16.12.2016 under the Tamil Nadu Value Added Tax Act 2006, for the year 2010-11, as show cause notice and submit their objections witin 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 in which the respondent shall peruse all the records and documents produced by the petitioner. If any clarification is required, the petitioner shall be called upon to explain the same, giving reasonable time and thereafter, re-do the assessment in accordance with law.

15. In the light of the above directions, the respondent shall not initiate any coercive action against the petitioner for recovery of the taxes and penalty quantified in the impugned assessment order. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sli

To

The Assistant Commissioner(CT),
Commercial Taxes Buildings,
Ariyalur- 621 704.

+1cc to Mr.S.Sivakumar, Advocate, S.R.No.68919
+1cc to the Government Pleader, S.R.No.68027

W.P. No.4444 of 2017

GJ II(CO)
RS(31/10/2017)