In the High Court of Judicature at Madras

Dated : 06.12.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.31007 of 2017
&
WMP.Nos.33981 & 33982 of 2017

Tvl.Yash Infratek, rep.
by its Proprietor ...Petitioner

Vs

The Assistant Commissioner (ST),
Tiruvannamalai-1. ...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 on the file of the respondent vide his impugned proceedings made in TIN 33906304257/2015-16 dated 27.9.2017, quash as illegal, arbitrary and unconstitutional and further direct the respondent to pass fresh orders after considering the objections filed by the petitioner in accordance with law after granting them an opportunity of personal hearing.

For Petitioner : Mr.R.Ganesh Kanna

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. The petitioner is aggrieved by the order of assessment dated 27.9.2017 for the year 2015-16 under the said Act.

3. On verification of the monthly returns and purchase details gathered from the Departmental website, the respondent proposed to revise the assessment for the relevant year and issued a notice dated 31.7.2017 under Section 27 of the said Act. The petitioner submitted their objections stating that in respect of two dealers namely M/s.Ravis Hydro Cares and M/s.Sri Vinayaga Agency, they admitted that they had transactions with them. However, the petitioner took a stand that they are for self consumption. With regard to M/s.Sri Ganapathy & Company, the petitioner took a stand that they did not have any transactions with them.

4. On receipt of the objections, the respondent considered the same and found that in respect of M/s.Ravis Hydro Cares and M/s.Sri Vinayaga Agency, though the petitioner admitted that they had transactions with those dealers, they raised a plea that it was a purchase for self consumption. If such a stand is taken by the dealer before the respondent, then the petitioner is duty bound to prove before the respondent that the goods purchased were utilized by them for their own consumption. Having failed to prove the said fact, the finding rendered by the respondent with regard to the transactions with those two dealers namely M/s.Ravis Hydro Cares and M/s.Sri Vinayaga Agency, is perfectly in order and to that extent, the impugned order is confirmed.

5. So far as the finding in respect of M/s.Sri Ganapathy & Company, the petitioner totally denied the transactions. In such cases, the respondent could have afforded an opportunity to the petitioner to produce the books of accounts to establish that they never dealt with M/s.Sri Ganapathy & Company and this opportunity was not given to the petitioner, though they specifically sought for an opportunity of personal hearing in their objections dated 15.9.2017. To that extent, the impugned order requires to be set aside and the assessment is to be redone.

6. Accordingly, the writ petition is partly allowed, the finding rendered by the Assessing Officer with regard to the alleged transactions of the petitioner with M/s.Sri Ganapathy & Company is set aside and the matter is remitted back to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner, peruse the books of accounts and pass fresh orders of assessment in respect of M/s.Sri Ganapathy & Company. In so far as the transactions, which the petitioner had with M/s.Ravis Hydro Cares and M/s.Sri Vinayaga Agency, the finding rendered by the

Assessing Officer is confirmed and the tax and penalty as quantified in the impugned assessment order shall be paid by the petitioner within a period of 15 days from the date of receipt of a copy of this order. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Tiruvannamalai-1.

+ 1 cc to Mr.A. Ravichandran, Advocate SR.87126
+ 1 cc to Mr. Special Government Pleader Sr.87507

WP.No.31007 of 2017 &
WMP.Nos.33981 & 33982
of 2017

GJ(CO)
EU(26/12/2017)