IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED:06.12.2017
Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.31555 of 2017 & WMP.No.34674 of 2017

M/s.Infini Impex, rep.by
its Partner D.Ajit Kumar ...Petitioner

Vs

The Deputy Commercial Tax Officer
(now redesignated as Deputy Sales
Tax Officer), Anna Salai Assessment
Circle, 4th Floor, PAPJM Buildings
Annexe, Greams Road, Chennai-6. ...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 in TIN No.33820600798/2014-15 dated 24.8.2017, quash the same as illegal and contrary to provisions of Section 22(4) of the Tamil Nadu Value Added Tax Act and against the principles of natural justice and fair play and direct the respondent to grant sufficient and reasonable opportunity to produce the books of account and personal hearing in the matter.

For Petitioner : Mr.T.Pramod Kumar Chopda
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 and the Central Sales Tax Act, 1956 with effect from 21.1.2015. The petitioner is aggrieved by the impugned assessment order dated 24.8.2017 for the year 2014-15.

3. The petitioner's case is that best judgment assessment could not have been made under Section 22(4) of the State Act, since the petitioner has already been deemed to have been assessed under Section 22 of the State Act and if at all, it can be a revision of assessment by resorting to the power under Section 27 of the State Act.

4. Under normal circumstances, this Court would have examined the correctness of the contentions raised by the

petitioner. However, this Court does not propose to do so on account of the conduct of the assessee. The petitioner was issued with the summons dated 02.6.2017 calling upon the petitioner to produce purchase invoices, sale invoices, copies of monthly returns, balance sheet with profit and loss account statement, bank current account statements, tax paid details and any other details relevant to the assessment year 2014-15. It is not in dispute that the petitioner received the summons. But, they did not produce the documents. One more opportunity was granted to the petitioner by way of a revision notice dated 11.8.2017, giving the petitioner seven days' time to respond and produce the documents. Even for this notice, the petitioner did not respond and produce the documents. Therefore, the respondent confirmed the proposal and passed the impugned order.

5. In paragraph 3 of the affidavit filed in support of this writ petition, the petitioner stated that the representative of the petitioner appeared before the respondent along with books of accounts on two occasions, that the respondent was undergoing GST training during the relevant time and that the office of the respondent stated that the next hearing would be intimated to the petitioner. It has not been clearly stated as to on what date, the petitioner's representative appeared before the respondent along with the books of accounts. Therefore, this Court is not inclined to accept the said stand, as it is a vague averment. However, considering the fact that the petitioner started business only on 21.1.2015, during the advent of GST regime, this Court is inclined to afford an opportunity to the petitioner, however, subject to a condition.

6. Accordingly, the writ petition is disposed of with a direction to the petitioner to pay 15% of the disputed tax within a period of 30 days from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they will be entitled to treat the impugned order as a show cause notice and submit their objections within a period of seven days therefrom. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner, peruse all the documents and redo the assessment in accordance with law. It is needless to add that the benefit of this order will not enure to the petitioner if the petitioner fails to comply with the condition of payment of 15% of the disputed tax within the time stipulated. No costs. Consequently, the above WMP is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To
The Deputy Commercial Tax Officer (now redesignated as Deputy Sales Tax Officer), Anna Salai Assessment Circle, 4th Floor, PAPJM Buildings Annexe, Greams Road, Chennai-6.

+1cc to Mr.T.Pramodkumar Chopda, Advocate SR.No.86466

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GMR(CO)
sm:6.12.2017