IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.08.2017

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P. No.21660 of 2017
and
W.M.P.No.22657 of 2017

Tvl.Om Electricals and Hardwares,
Rep by its Proprietor Mr.D.Dinesh,
No.7, Marakkanam Main Road,
Murukkeri (village). Marakkanam (TK),
Villupuram District. .. Petitioner

Vs

The Deputy Commercial Tax Officer,
Tindivanam Assessment Circle,
Tindivanam, Villupuram District. .. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari calling for the records on the files of the respondent proceedings in TIN/33494723819/2013-13 dated 14.07.2017 and quash the same being violative of the principles of natural justice, illegal, invalid and without authority of law and contrary to principles of natural justice.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.D.Vijayakumar, learned Counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent of the learned counsel appearing on either side, the Writ petition is taken up for final disposal, at the admission stage itself. This is the second time the petitioner is before this Court, challenging the Assessment order for the year 2012-2013 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act").

2. Earlier the petitioner challenged the Assessment order, dated 02.12.2016, in W.P.No.959 of 2017, by which the petitioner's turnover was sought to be revised, based on an information obtained from the official website and alleging that there are interstate purchase transactions and therefore, the petitioner is not entitled to take the option of paying taxes at the compounded rate u/s 3(4) of the Act.

3. The petitioner took a specific stand that they have not effected any interstate purchases. Therefore, the Court in W.P.No.959 of 2017 dated 12.01.2017, was inclined to set-aside the earlier Assessment order dated 02.12.2016, giving liberty to the respondent to pass fresh orders, after giving due opportunity to the petitioner. The respondent was directed to take into account the objections dated 23.10.2016 and afford an opportunity of personal hearing, before passing the fresh order. The respondent was further directed, to furnish all relevant materials, on the basis of the notice dated 22.09.2016, which was issued to the petitioner before proceeding further in the matter.

4. Pursuant to the earlier order passed, the respondent issued notice dated 20.03.2017, enclosing certain details, which were sought for by the petitioner. On receipt of the same, petitioner submitted an objection, dated 22.04.2017, stating that it is just and necessary for the respondent to have furnished the details, recovered in the web report and to grant an opportunity of being heard and also cross examination of the third party records. It was further stated that the respondent has enclosed the web report copy generated on 12.04.2017 and it is not clear from the report that the petitioner has effected purchases from the Consignor, by bill dated 26.05.2012. Therefore, the petitioner requested the respondent to confirm, whether they have effected purchases from the said bill and if someone has reported that they have effected sales to the petitioner, then the petitioner should be granted an opportunity to correct the statement with documentary evidence.

5. The petitioner has placed reliance on the decision of this Court in the case of J.K.M. Graphics Solutions Private Limited v. Commercial Tax Officer (2017) 99 VST 343 (Madras). Therefore it was contended that when providing an opportunity to cross examine, it is only a presumption that the petitioner has effected purchases from other state dealers and assessment should not be made on presumption and assumption. Therefore, once again, the petitioner requested to furnish the full details and grant opportunity before passing the assessment order. Though such was the plea raised by the petitioner, the respondent chose to extract three lines from the objections and completed the assessment by stating that, in terms of section

17 of the Act, the burden of proof lies on the petitioner / Dealer.

6. In my considered view, the respondent has failed to appreciate the purpose and purport of the order of remand passed by this Court, in the earlier writ petition, namely W.P.No.959 of 2017, dated 12.01.2017. The direction to furnish all relevant materials is with the specific purpose that the petitioner should have sufficient opportunity to rebut the same. This direction was issued by the Court, taking into consideration the specific stand of the petitioner that they have not effected any interstate purchases.

7. The petitioner is stated to have reliable information that another person has effected transactions from the dealer at Puducherry, but since the petitioner cannot have any access to departmental records, they are unable to pin-point, as to who is that dealer. Therefore, the petitioner's endeavour was to request the respondent to conduct an enquiry, gather details from their counter-parts at Puducherry, then, if there is any incriminating records to show that interstate purchases have been recorded in the name of the petitioner by a dealer in Puducherry, then the petitioner should be granted an opportunity to cross-examine such dealer. None of these issues have been taken note off, by the respondent nor the respondent has made an attempt to examine as to the effect of the decision in the case of the JKM Graphics Solutions Pvt Ltd on the facts of this case.

8. Thus, the impugned order is wholly un-sustainable and perverse. For the above reasons, the Writ petition is allowed and impugned order is set-aside with a direction to the respondent to gather full information from their counter-parts at Puducherry, furnish such information to the petitioner, provide them opportunity to file their objections and if there is any other dealer involved, the said dealer should be summoned to enable the petitioner to cross-examine him and thereafter, the respondent shall complete the assessment, in accordance with law. No costs, consequently connected Miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kv/srk

To

The Deputy Commercial Tax Officer,
Tindivanam Assessment Circle,
Tindivanam, Villupuram District.

+1 cc to the Special Government Pleader Taxes sr 58945
+1 cc to M/s.D.Vijayakumar Advocate sr 58475

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