In the High Court of Judicature at Madras

Dated : 19.09.2017

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.24957 of 2017
and W.M.P.Nos.26333, 26334 of 2017

Tvl. Power Tech Engineers,
Rep. by its Proprietor Noor Jehan,
459 - A, Bajanai Koil Street,
Venkatesapuram, Palanipet Post,
Arakonam. ...Petitioner

Vs

The Commercial Tax Officer (CT),
Arakonam Assessment Circle,
Arakonam. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the Respondent in TIN/33094301410/2012-13 dated 29.11.2013 and quash the same as arbitrary, illegal.

For Petitioner : Mr.P.R.Kumar
For Respondent : Mr.K.Venkatesh, GA

O R D E R

Heard Mr.P.R.Kumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent. With the consent on either side, the writ petition itself is taken up for final disposal.

2. The petitioner filed this writ petition challenging the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2012 - 2013.

3. The writ petition cannot be entertained for more than one reason. Firstly, the impugned assessment order was passed on 29.11.2013 and as on date, the petitioner cannot even file an appeal before the Appellate Authority. If such is the fact situation, obviously the Writ Court cannot entertain the writ petition.

4. The learned counsel for the petitioner would submit that the respondent had failed to consider that taxes have been paid for the sales made and therefore, the purchases effected by the third party/petitioner's buyer should not be the basis for the respondent to assess the petitioner. Further, it is submitted that the respondent failed to make any enquiry with the petitioner's selling dealer and had this been done, it would have been clearly established that the allegation of mismatch is incorrect. In this regard, reliance is placed on the decision of this Court in the case of JKM Graphics Solutions (P) Ltd. Vs. CTO, Vepery Assessment Circle, Chennai.

5. Considering the fact that the order of assessment was passed in November 2013 and till date, the respondent has not been able to recover penalty as quantified in the impugned assessment order and also considering the fact that the revision of turnover was based on the allegation of mismatch, this Court is inclined to grant one opportunity to the petitioner subject to a stringent condition.

6. Accordingly, the writ petition is disposed of directing the petitioner to pay the balance amount of tax payable as per the impugned assessment order, namely Rs.1,95,122/- within a period of three weeks from the date of receipt of a copy of this order. If this condition is complied with, the petitioner is entitled to treat the impugned assessment order as a show cause notice and subject their objections, duly supported by the records, such as invoices, bank statement etc., and on receipt of such objections and documents, the respondent shall re-do the assessment, after affording an opportunity of personal hearing to the petitioner. In the event the petitioner fails to make payment of tax as directed by this Court, the writ petition will stand automatically dismissed without any further reference to this Court. No costs. Consequently, the connected WMPs are also dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (CT),
Arakonam Assessment Circle,
Arakonam.

+1cc to Mr.P.R.Kumar, Advocate, S.R.No.68210

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CB(30/10/2017)