IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 28.07.2017

Coram

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

Writ Petition No.2475 of 2006 (T)

O.P.No.107 of 2004

Rajam Chemicals,
75, 4th Avenue,
Ashok Nagar,
Chennai - 600 083. ...Petitioner

Vs.

The Commercial Tax Officer,
Saligramam Assessment Circle,
No.20, 89th Street,
Ashok Nagar,
Chennai - 600 083. ...Respondent

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records on the file of the respondent, in his TNGST/ 1420089/97-98, dated 05.01.2004, and to set aside the same, and to direct the respondent to grant a reasonable opportunity of hearing and rectify the order of assessment in TNGST/1420089/97-98, dated 03.03.2000, insofar as it relates to amount of Rs.6,99,387.62 under the head ''Other Income''.

For Petitioner : Mr.N.Prasad

For Respondent : Mr.S. Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.N.Prasad, the learned counsel appearing for the petitioner and Mr S. Kanmani Annamalai, the learned Additional Government Pleader for the respondent.

2. The petitioner, in this Writ Petition, challenges the order passed by the respondent, dated 05.01.2004, rejecting the petitioner's application for rectification filed under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 (henceforth, referred to as 'the TNGST Act') dated 31.12.2003, on the sole ground that there is no mistake apparent on the face of record.

3. The petitioner has not challenged the assessment order, in its entirety, but only questions income portion of the assessment order, by filing application under Section 55 of TNGST Act. In the Petition, the petitioner specfically stated that, in the notice, dated 27.12.1999, there is no proposal to disallow any claim to an extent of Rs.6,99,387.62, and there was no enquiry with regard to the said amount under the head 'other income' column. Further, the petitioner stated that they have not been directed to furnish any details with regard to the said amount, and while that being so, the assessment has been completed by order, dated 03.03.2003. Therefore, the petitioner submitted that the errors may be rectified, and they may be given an opportunity of personal hearing and the assessment may be redone only with regard to the said head. However, the respondent in a most cryptic manner, rejected the Petition by the impugned order, merely by stating that there is no mistake apparent on the face of record.

4. The order passed by the respondent is incorrect, because, the mistake which is pointed out by the petitioner is a valid mistake, since, according to the petitioner, there was no proposal in the notice, dated 27.12.1999, to disallow any claim to the extent of Rs.6,99,387.62, and there was no enquiry with regard to the said amount under the head 'other income' column. Therefore, the respondent is bound to examine the Petition filed under Section 55 of the TNGST Act, and find out as to whether there were any such errors, and before passing the order, ought to have afforded an opportunity of personal hearing, which the petitioner has sought for in their Petition. Added to that, on the very same day, the respondent issued the notice, dated 31.12.2003, proposing to levy penalty under Section 24 (3) of TNGST Act.

5. Thus, for the above reasons, the impugned order calls for interference. Accordingly, this Writ Petition is allowed and the impugned order is set aside and the respondent is

directed to take on file the Petition filed by the petitioner under Section 55 of TNGST Act, dated 31.12.2003, and afford an opportunity of personal hearing to the petitioner and consider all the documents and redo the assessment only with regard to the said documents. No costs.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Saligramam Assessment Circle,
No.20, 89th Street,
Ashok Nagar, Chennai - 600 083.

+1cc to Special Government Pleader SR.No.24481

Writ Petition No.2475 of 2006

SDR 06.10.2017