IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 06.12.2017
CORAM
THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM
W.P Nos.44442 and 44443 of 2016
&
W.M.P.Nos.38282 and 38283 of 2017

M/s.Jeevan Park
Represented by its Partner
Mr.D.Balasundaram
No.5, Chennai Main Road
Mudiyampakkam Post
Villupuram - 605 601 ... Petitioner in both WPs

vs

The Assistant Commissioner (CT)
Villupuram - I Assessment Circle
Villupuram ... Respondent in both WPs

Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN33864683506/2013-2014 and TIN33864683506/2014-2015 and quash the impugned order dated 28.09.2016 and 15.06.2016 respectively as contrary to the provisions of the Tamil nadu Value Added Tax Act and against the principles of natural justice.

For Petitioner : Mr.P.Ravikumar

For Respondent : Mr.K.Venkatesh
Government Advocate

COMMON ORDER

Heard Mr.P.Ravikumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2. Since the respondent has given para wise instructions to the learned Government Advocate, which is in the form of a draft counter affidavit, the learned counsel on either side advanced arguments in the main writ petition. Accordingly, the writ petitions are disposed of by this common order.

3.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2016 having obtained a registration on 17.09.2013. The petitioner's case is that it is a partnership firm, which had put up construction for establishing a vegetarian restaurant by M/s.Adayar Ananda Bhavan India Pvt. Ltd.,. According to the petitioner, all the equipments and furnitures and fittings were purchased by the petitioner for their own purpose to be used in the property where the restaurant was to be constructed as per the design approved by M/s.Adayar Ananda Bhavan India Pvt. Ltd., Therefore, it is the petitioner's case that they have not effected any sale transaction and purchased the equipments and furnitures for their own purpose. However, since the petitioner had obtained a registration under the provisions of the Tamil Nadu Value Added Tax Act, they attempted to file their e-returns. However, they have misplaced the password and requested the respondent, by representation dated 29.01.2015 to regenerate the online password. After the said representation, on 05.02.2015, the respondent issued a notice stating that the petitioner has not filed returns for the Assessment Year 2013-14 and on verification of the webreport it was found that the petitioner had effected purchases during the relevant year and therefore, the respondent proposed to determine the total and taxable turnover under Section 22(4) of the TNVAT Act, 2006 and impose penalty under Section 22(5) of the TNVAT Act, 2006.

4. The petitioner sent a reply dated 14.02.2015, while acknowledging the receipt of the notice dated 05.02.2015 and requesting the details of purchases effected as found in the respondent's data base, to enable them to give appropriate response. This letter was received by the respondent on 19.02.2015. The details appears to have been furnished by the respondent on 16.04.2015 for which the petitioner submitted a reply on 28.04.2015 stating that all the purchases mentioned in the web report are building materials and since it is not capital goods, they need not mention the purchases in the annual return. The petitioner further stated that the password has been lost by them and they have already sent a letter for regenerating the password and they enclosed the copy of the said letter and purchase bills and also plan approval for perusal and also requested the respondent to regenerate the password in order to file e-return. This objection was received in the office of the respondent on 29.04.2015, as could be seen from the seal and signature affixed in the copy of the objection. However, for more than one year, the respondent did not take any action and the new officer who assumed charge, has passed the impugned Assessment order confirming the proposal in the revision notice.

5. The respondent in the written instruction given to the Government Advocate has stated that copy of the agreement between the petitioner and M/s.Adyar Ananda Bhavan India Pvt. Ltd., were not brought to the notice of the respondent. Therefore, he has disbelieved the stand taken by the petitioner. Further the respondent has stated that if the petitioner had engaged any other contractor for construction, in accordance with Section 13(1) of the Act, TDS ought to have been deducted. This observation, I find is on an assumption as the respondent has stated that if the petitioner would have engaged a contractor and therefore, there is a requirement to deduct TDS. From the facts mentioned above, I find that the respondent should have issued notice before taking up the assessment for final decision.

6. Though the respondent would state that he is not required to issue such a notice, two aspects have to be borne in mind by the respondent, namely, more than one year had elapsed after the objections were submitted to the revision notice. The objection of the petitioner having been received by the respondent on 29.04.2015, the petitioner cannot be blamed for the delay as the Department did not take steps to complete the assessment. The second aspect is, there has been a change of Assessing Officer and the new Officer has taken charge. Therefore, to enable a proper assessment to be made, the Assessing Officer should have acted in a proactive manner by calling upon the Assessee to appear before him and produce necessary documents. It has been held in several decisions that the Assessing Officer should not act in a hostile manner as the endeavor of the Assessing Officer is to ensure that a proper assessment is made. The Assessment order is not a paper order, but should result in recovery of the correct rate of tax which has been assessed and quantified. Thus, I find that there has been violation of principles of natural justice on account of the long lapse of time between the date of objection and the date on which the impugned Assessment order was passed. Apart from that, the petitioner was put to prejudice because the new officer, who had assumed charge, did not issue a notice to the petitioner that he propose to complete the assessment. Therefore, this Court is of the considered view that the assessment should be redone.

Accordingly, the writ petition is allowed and the impugned orders dated 28.09.2016 and 15.06.2016 are set aside and the matter is remanded to the respondent for fresh consideration, who shall fix a date for personal hearing, on which date the authorized representative of the petitioner shall appear before the respondent and produce all documents and records. On perusal of the same, the respondent shall redo the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (CT)
Villupuram – I Assessment Circle
Villupuram

+1 cc to Mr.P.Rajkumar Advocate sr 86469
+1 cc to Special Government pleader sr 87508

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