IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.04.2018

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The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition No.3379 of 2018
and
W.M.P.No.4134 of 2018

Ahoka Buildcon Ltd.,
rep. by its Authorized Representative
...Petitioner

Vs.

1. The Assistant Commissioner (CT)
Avadi Assessment Circle,
No.26, Vivekananda Street, Gandhi Nagar,
Avadi, Chennai - 600 054.

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3. The Government of Tamil Nadu,
rep. by its Secretary,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009. ...Respondents

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records relating to the impugned order passed by the first respondent in TIN : 33811304199/2015-16, dated 17.04.2017, and the consequential recovery notice in RC.No.33811304199, dated 04.01.2018, under TNVAT Act to the extent of demand raised for VAT AY 2015-16, and to quash the same.

For Petitioner : M/s.R.Charulatha

For Respondents : Mrs.G.Dhanamadhri
Government Advocate

O R D E R

Heard M/s.R.Charulatha, the learned counsel appearing for the petitioner and Mrs.G.Dhanamadhri, the learned Government Advocate, appearing on behalf of the respondents.

2. The petitioner has filed this Writ Petition, challenging the order of assessment passed by the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, for brevity), for the assessment year, 2015-16, dated 17.04.2017.

3. As against the impugned order, the petitioner has an alternate remedy of filing Appeal. However, if the Appeal is to be filed at present, or, when the Writ Petition was filed, it would have been rejected, as being barred, as the Appeal Petition would have been presented beyond the period of limitation, and thus, the petitioner having lost such an opportunity, is before this Court, by way of this Writ Petition.

4. Under normal circumstances, this Court would have declined to interfere with the impugned order and dismissed the Writ Petition, but, on perusal of the impugned order, the Court finds that, no reasons have been recorded by the Authority, and it is a non-speaking order. The petitioner's case is that, no notice was received by them, no reply was filed by them, and no opportunity of personal hearing was fixed. However, the impugned order shows that, notice was issued on 13.08.2015, dealer has filed written statement on 22.08.2015, and personal hearing was conducted on 31.05.2016. However, in the body of the impugned order, there is no discussion as to the stand taken in the written statement and what transpired in the personal hearing, etc., Thus, I find that the impugned order is devoid of reason. Hence, one more opportunity should be granted to the petitioner to go before the Assessing Officer and contest the matter on merits. However, this order is subject to the certain conditions (mentioned infra).

5. In the result, the Writ Petition is disposed of, by directing the petitioner to pay 15 % of the disputed tax within three weeks from the date of receipt of a copy of this order. If the petitioner complies with this condition, then, they will be entitled to treat the impugned assessment order as show cause notice and submit their objections enclosing all relevant records, in support of their claim within 7 days from the date on which, remittance of 15% of the disputed tax has been made, and as and when the objections are received in full form, the first respondent shall fix a date for personal hearing of the Authorized Representative of the petitioner, consider the objections filed by the petitioner, verify the documents that may be produced and redo the assessment in accordance with law, by passing a reasoned order. Till the above exercise is completed, no coercive action shall be initiated against the petitioner, pursuant to the recovery notice, dated 04.01.2018, for recovery of the balance tax and penalty, as quantified in the impugned assessment orders. It is made clear that, if the

petitioner does not comply with the condition imposed by this Court, then, the benefit of this order will not enure to the petitioner and the Writ Petition would stand dismissed automatically, leaving it open to the first respondent to proceed further, pursuant to the imupgned assessment order/recovery notice in accordance with law. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To
1. The Assistant Commissioner (CT)
Avadi Assessment Circle,
No.26, Vivekananda Street, Gandhi Nagar,
Avadi, Chennai - 600 054.

2. The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3. The Secretary, Government of Tamil Nadu,
Commercial Taxes Department,
Fort St. George, Chennai - 600 009.

+1cc to the Spl Government Pleader, S.R.No. 27355

Writ Petition No.3379 of 2018

ssi(CO)
TR(16/05/2018)