In the High Court of Judicature at Madras

Dated : 01.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2053 of 2018 & WMP.No.2570 of 2018

M/s.Sri Vijaya Ganapathy Stores, rep.
by its Partner Mr.C.Udhayakumar ...Petitioner

Vs

1.The Additional Deputy Commercial Tax Officer-GD I, Office of the Commercial Tax Officer-GD I, Commercial Taxes Department, Puducherry.

2.The Deputy Commercial Tax Officer (Mobile), Commercial Taxes Department, Puducherry. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in No.34310000244/ADCTO-GD I/2017 dated 28.12.2017, quash the same as passed contrary to the provisions of the Pondicherry Value Added Tax Act, 2007 and further direct the first respondent to pass a fresh assessment after issuing a show cause notice and after granting reasonable opportunity to the petitioner under the provisions of the Pondicherry Value Added Tax Act, 2007.

For Petitioner : Mr.P.Rajkumar
For Respondents: Mr.J.Kumaran, GA (Puducherry)

ORDER

Mr.J.Kumaran, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by an order dated 28.12.2017 passed by the first respondent - the petitioner's Assessing Officer under the provisions of the Pondicherry Value Added Tax Act, 2007.

3. This Court finds that prior to passing the impugned order, the Assessing Officer has not issued any revision notice proposing to revise the turnover of the petitioner for the

relevant period. The notice dated 02.11.2017, termed as a final notice, is not a revision notice, but is a demand by itself. It appears that during the course of inspection conducted by the second respondent, a sum of Rs.77,53,113/- has been collected from the petitioner by means of cheques. This, according to the petitioner, was collected under threat and coercion. Further, without any proposal to levy penalty, the question of issuing the demand dated 02.11.2017 and further passing the impugned order dated 28.12.2017 does not arise.

4. The procedure, which is to be adopted by the first respondent - Assessing Officer, as and when any proposal is received from the officials of the Enforcement Wing, is to issue a notice to the dealer. Thereafter, dealer should be given full opportunity to put forth their objections and if any documents are required by the dealer, copies of such documents should be furnished, after which, the dealer should be permitted to submit their further objections and only affording an opportunity of personal hearing, the assessment can be finalized. However, the first respondent has committed a gross procedural error in passing the impugned order, which is in the nature of a demand. Therefore, the impugned order is not sustainable; equally so the final notice dated 02.11.2017.

5. Accordingly, the writ petition is allowed, the impugned order dated 28.12.2017 and the final notice dated 02.11.2017 are set aside and the matter is remanded to the first respondent to issue a revision notice to the petitioner based on the proposal received from the Inspecting Officer and after affording an opportunity full and effective opportunity to the petitioner, which includes supply of copies of documents, which may be sought for, the assessment shall be done in a proper manner. No costs. Consequently, the connected WMP is closed.

6. It is stated that the impugned order is a common order for two assessment years namely 2014-15 and 2015-16.

7. This is also one more error committed by the first respondent while passing the impugned order. It is made clear that while issuing revision notice to the petitioner, the first respondent shall issue separate notices for each assessment years with full details and then only proceed further in accordance with law.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To

1.The Additional Deputy Commercial Tax Officer-GD I, Office of the Commercial Tax Officer-GD I, Commercial Taxes Department, Puducherry.

2.The Deputy Commercial Tax Officer (Mobile), Commercial Taxes Department, Puducherry.

+ 1 cc to Mr.P.Rajkumar Advocate,SR.7311

+ 1 cc to The Govt.Pleader(Pondy), SR.8120

WP.No.2053 of 2018&
WMP.No.2570 of 2018

nr 22/02/2018