IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 27.06.2018
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.No.11116 of 2017 &
W.M.P.No.12048 of 2017

Ashoka Buildcon Ltd.,
(Represented by its authorized representative)
Flat A, Shivadharini Apartments,
Plot No.42, 2nd cross,
Pattabiram, Thandarai Village,
Chennai-600 072. .. Petitioner

v.

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

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

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

Prayer: Writ Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in TIN:33811304199/2014-15 dated 28.02.2017, quash the same.

For Petitioner : Ms.R.Charulatha

For Respondents: Ms.G.Dhana Madhri
Government Advocate

ORDER

Heard Ms.R.Charulatha, learned counsel for M/s.Lakshmi Kumaran, Sridharan Attorneys, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondents.

2. The petitioner has filed this writ petition challenging the assessment order dated 28.02.2017 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2014-2015.

3. On a reading of the impugned order, I find that it is an outcome of total non-application of mind without taking note of the stand taken by the petitioner in their reply dated 19.09.2015 as well as in the written submission filed on 31.05.2016. The proceedings commenced with the issuance of revision notice dated 12.08.2015, for which, the dealer had submitted their reply on 28.02.2017, prior to that, written submission has also been made on 31.05.2016. For nearly a year, nothing happened and personal hearing was fixed on 23.05.2016.

4. I am informed by the learned counsel for the petitioner that the Officer, who heard the petitioner was different officer than who issued the show cause notice. In any event, the petitioner appeared before the respondent, produced the party ledger statement and all other records to substantiate their case. After the personal hearing got concluded on 31.05.2016, nothing happened almost eight months and the impugned order has been passed in February 2017. The discussion is only in the last four lines of the impugned order and the same is cryptic as it does not deal with the documents produced by the petitioner. The Division Bench in the case of the Assistant Commissioner (CT), presently Thiruverkadu Assessment Circle, Kolathur, Chennai (Mad) v. Infiniti Wholesale Limited reported in 2017 (99) VST 341 held that if the sales effected to the dealer were not disclosed by such a seller either in the form of return filed monthly or the tax collected from the dealer was not made over to the Department by such seller, action would lie against such defaulting seller and not against the purchaser. Instead of trying to cross verify the input-tax credit availed of by the dealer with specific reference to each component, action was directed by the assessing officer against the dealer.

5. The above decision would apply to the case on hand. Thus, the court being satisfied that the impugned order is outcome of non-application of mind. Failure to consider the objections filed by the petitioner in a proper manner and undue delay are sufficient to quash the impugned proceedings.

6. Accordingly, the writ petition is allowed, impugned order is quashed and the matter is remanded to the respondent for fresh consideration, after issuing notice of personal hearing and consideration of the documents produced by the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mm/Rj

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

2. 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 M/s.Lakshmi Kumaran, Advocate SR.No.42868
+1cc to Government Pleader sr.No.41579

NRL(CO)
sm:6.7.2018

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