IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2018

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THE HON'BLE MR.JUSTICE K.RAVICHANDRABABU

W.P.No.21396 of 2018
and
WMP.No.25094 of 2018

M/s.Solvermind Solutions & Technologies Private Limited
Rep. by its Director
Mr.Anthony Damian
No.2-B4, 7th Street, SIPCOT, IT Park
Siruseri, Kancheepuram - 603 103. ..Petitioner

Vs

1. The State Tax Officer
Kelambakkam Assessment Circle
Plot No.141, Burma Colony 3rd Floor
First Main Road, Perungudi
Chennai-600 096.

2. The State of Tamil Nadu
Rep. by its Secretary to Government
Commercial Taxes and Registration Department
Fort St.George, Chennai-600 009. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records of the first respondent in TIN:33176318093/2016-17 dated 12.07.2018, quash the same as ultravires of the provisions of the Tamil Nadu Value Added Tax Act, 2006 r/w Article 286 of the Constitution of India.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Ms.G.Dhana Madhri, Government Advocate (Tax)

O R D E R

The petitioner is a registered dealer and an Assessee under the first respondent. The present writ petition is filed challenging the order of assessment dated 12.07.2018 made in respect of the assessment year 2016-2017.

2. The main grievance of the petitioner is that the first respondent has chosen to pass the impugned order of assessment in violation of principles of natural justice. It is the specific contention of the petitioner that even before expiry of six months time granted by the first respondent for filing a reply to the notices of proposal dated 14.02.2018 and 11.04.2018, the Assessing Officer has passed the impugned order on 12.07.2018 itself well before the expiry of six months time granted to the petitioner. Thus, the learned counsel for the petitioner submitted that the petitioner must be given a reasonable opportunity to file their objections and contest the matter before the first respondent on merits.

3. Per contra, the learned Government Advocate (Tax) for the respondents, based on instructions, submitted that the petitioner has not been given, anything in writing, six months time to file their objections as alleged. Thus, she submitted that the first respondent, after waiting for six months time and finding no response from the petitioner, had left with no other option, except to pass the impugned order of assessment. Therefore, she contended that the petitioner is not entitled to complaint as if the respondent has violated the principles of natural justice. She further contended that the petitioner has also filed an application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006, seeking rectification on 14.08.2018 and the said application is still pending before the respondents. She also submitted that the scope under Section 84 of the TNVAT Act, 2006, is very limited and therefore, all the contentions raised by the petitioner in this writ petition cannot be canvassed in the application filed under Section 84 of the TNVAT Act, 2006.

4. Heard both sides.

5. The only grievance of the petitioner is that the first respondent has passed the impugned order before completion of the time granted to them to file their reply. It is not in dispute that the notices of proposal were issued on 14.02.2018 & 11.04.2018 and the impugned order of assessment was passed on 12.07.2018. Perusal of the impugned order would show that there is a clear indication to suggest that the first respondent has granted six months time to the petitioner to furnish the details and export documents. When such categorical assertion made by the first respondent in the impugned order evidently show that the petitioner failed to furnish the detail and export documents, even after grant of six months time to do so, it cannot be said now that no such time was ever granted to the petitioner.

Admittedly, the first respondent has not issued errata to the order already passed on 12.07.2018. Therefore, the first respondent has to stick on to the contents of the order and cannot say otherwise. When such being the factual position, I find force in the submission made by the learned counsel for the petitioner that the impugned order was passed without hearing the petitioner. At the same time, the petitioner is also not justified in waiting till the last date to file their objections and documents. They should have approached the first respondent and filed the same as early as possible immediately, after the receipt of the notice of proposal. In any event, as the impugned order was passed in the absence of the objections from the petitioner, this Court is of the view that the interest of justice will be served, if one more opportunity is given to the petitioner to approach the first respondent and file their objections with relevant documents.

6. At this juncture, the learned counsel for the petitioner submitted that the petitioner will withdraw the application filed under Section 84 of the TNVAT Act, 2006, immediately, if the present impugned order is set aside and the matter is remitted back to the Assessing Officer.

7. Considering the above stated facts and circumstances and the undertaking given by the petitioner's counsel, this writ petition is allowed in the following terms:

(a) The impugned order is set aside and the petitioner and the first respondent are directed to treat the said order as final notice of proposal.

(b) The petitioner is granted two weeks time to file reply to the said final notice of proposal, from the date of receipt of a copy of this order.

(c) On receipt of such reply, the first respondent shall fix a date for personal hearing and intimate the same to the petitioner.

(d) On completion of such personal hearing, the first respondent shall pass fresh order of assessment on merits and in accordance with law, within a period of four weeks from the date of completion of personal hearing.

(e) It is made clear that this Court is not expressing any view on the merits of the assessment already made by the Assessing Officer, since this writ petition is allowed only on the ground as indicated supra.

No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS iv)

//True Copy//

Sub Assistant Registrar

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+1cc to Mr.V.Sundareswaran, Advocate SR.No.58232

+1 CC TO SPECIAL GOVERNMENT PLEADER SR.NO. 58118

W.P.No.21396 of 2018

SPD(cO)
ASK(11/09/2018)