In the High Court of Judicature at Madras

Dated : 23.4.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.9996 of 2018 & WMP.No.11946 of 2018

M/s.Sharmee Ceramics, rep.by
Proprietrix Mrs.M.Sumathi ...Petitioner

Vs

The Assistant Commissioner (CT),
Ranipet Assessment Circle,
Ranipet, Vellore District. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the files of the respondent in TIN/33934281839/2013-14 dated 23.3.2018 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar
For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner, which is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is aggrieved by the impugned assessment order dated 23.3.2018 for the year 2013-14 in so far as it relates to the allegation of sales suppression on stock difference is concerned.

3. In the impugned order, it has been mentioned that sales suppression on stock difference is to the tune of Rs.64,12,996/- and that the petitioner is liable to pay tax at 14.5% to the tune of Rs.9,29,884/-. Correspondingly, penalty has also been levied at 100% under Section 27(3) of the said Act.

4. From the material papers placed before this Court, it could be seen that an inspection was conducted in the place of business of the petitioner on 27.6.2013 and a statement was

recorded from the proprietrix on 02.7.2013. With regard to the allegation of sales suppression on stock difference, the officers of the Enforcement Wing have found that under the said head, the petitioner has to pay tax of Rs.21,999/-, which was rounded off to Rs.22,000/- apart from Rs.2,000/- towards compounding fee.

5. The learned counsel for the petitioner submits that the said amounts have been paid. Referring to the sworn statement recorded from the proprietrix, the learned counsel has pointed out that the petitioner had accepted the tax to be paid at Rs.22,000/-.

6. Thereafter, a notice dated 30.6.2014 was issued by the respondent proposing to revise the turnover, which ultimately resulted in an assessment order dated 22.9.2014 and similar assessment orders were passed for the years 2011-12 and 2012-13. The petitioner challenged those orders by filing W.P.Nos.28268 to 28270 of 2014. The said writ petitions were disposed of by a common order dated 29.10.2014 and by remanding the matters to the respondent to redo the assessments after affording an opportunity of personal hearing. Pursuant thereto, the notice dated 01.6.2015 was issued wherein the respondent pointed out that the sale value of stock difference is to the tune of Rs.64,12,996/- and the tax payable at 14.5% on the said amount is Rs.9,29,884/-.

7. The petitioner submitted their objections dated 11.6.2015. Thereafter, the respondent issued the notice for personal hearing and by referring to the common order passed by this Court dated 29.10.2014, the respondent also issued a revision notice dated 28.9.2015. In the said revision notice, the allegation regarding stock difference was mentioned as Rs.12,94,666/-. The petitioner submitted their explanation stating that what was arrived at by the officials of the Enforcement Wing was incorrect and as per their accounts, it is a negative figure of (-)Rs.44380/- and it is below 2%. However, in the impugned order, the respondent, while completing the assessment under the said head, determined the sale value of stock difference as Rs.64,12,996/-.

8. Though in the notice dated 01.6.2015, the sale value of stock difference was mentioned at Rs.64,12,996/-, which is chargeable to tax at 14.5%, in the revision notice dated 28.9.2015, the respondent mentioned the figure as Rs.12,94,666/-. For the notice dated 28.9.2015, the petitioner gave their reply dated 26.10.2015. Therefore, the respondent was required to complete the assessment pursuant to the revision notice dated 28.9.2015 and no specific reason has been given in the impugned assessment order as to how the sale value of stock difference is determined at Rs.64,12,996/-. Hence, this Court is

satisfied that there has been a violation of the principles of natural justice to that extent.

9. Accordingly, the writ petition is partly allowed, the impugned order of assessment under the head "sale value of stock difference" and the consequential penalty imposed on the same are set aside and the matter is remanded to the respondent for a fresh consideration. The respondent shall afford an opportunity of personal hearing, redo the assessment under the said head afresh and pass appropriate orders on merits and in accordance with law. It is open to the respondent to issue a fresh notice to the petitioner and proceed further in the matter. In so far as the other issues are concerned, if the petitioner is so aggrieved, they may approach the Appellate Authority by filing an appeal. No costs. Consequently, the connected WMP is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To
The Assistant Commissioner (CT), Ranipet Assessment Circle, Ranipet, Vellore District.

+1 CC to Mr.D. Vijayakumar, Advocate sr 29738.
+1 CC to Spl. Govt. Pleader sr 30447.

WP.No.9996 of 2018 &
WMP.No.11946 of 2018

AD(CO)
SP(09/05/2018)