In the High Court of Judicature at Madras

Dated : 01.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2160 of 2018 & WMP.No.2685 of 2018

Tvl.Laksha Textiles, rep.by
its Proprietor S.Vengatraj ...Petitioner

Vs

The Assistant Commissioner (ST),
Tirupur North Circle, Tirupur. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the proceedings in TIN No.33796353545/2016-17 dated 27.12.2017 and quash the same.

For Petitioner : Mr.S.Raveekumar

For Respondent : Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In view of the limited issue involved, the writ petition itself is taken up for final disposal even at the admission stage.

2. The petitioner is aggrieved by the impugned assessment order dated 27.12.2017 for the year 2016-17 under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The respondent issued a show cause notice dated 07.11.2017 alleging that the petitioner had several transactions with two dealers namely M/s.Jay Jay Agency and M/s.Sri Lakshmi Traders and Annexure II of those dealers reveal that they have not reported sales turnover, on which, the petitioner availed input tax credit. Therefore, the respondent proposed to reverse the input tax credit under Section 19(2) read with Section 17 of the said Act. The petitioner was granted seven days' time to file their objections. The petitioner also submitted their objections dated 10.11.2017 pointing out the factual and legal position and also undertook to produce the original invoice to prove the allowable claim of input tax credit. It was further pointed out in the objections filed by the petitioner that three

entries in the show cause notice namely Sl.Nos.61, 62 and 63, were double entries and requested the respondent to amend the notice.

4. On receipt of the objections, the respondent issued another notice dated 16.11.2017 titled as 'notice for personal hearing'. However, this Court finds that it is not only a notice for personal hearing, but also there is one more allegation in the notice stating that the petitioner's place of business comprising of 164 sq.ft., will not have sufficient space for storing huge purchase of yarn and the petitioner was called upon to explain as to how the goods were sold in transit and the petitioner was required to produce consignment-wise purchase and corresponding sales details. Apart from that, the petitioner was also called upon to produce purchase invoice, transport documents to prove the actual transaction of goods, evidence for payment between the petitioner and the said two dealers and other supportive documents to prove the transaction. The petitioner was granted 15 days' time to file their objections.

5. Thus, it is clear that the notice dated 16.11.2017 is not only a notice for personal hearing, but also contains various allegations calling upon the petitioner to produce documents, records, etc. Unfortunately, the petitioner did not respond to this notice nor availed the opportunity to appear before the Assessing Officer. Consequently, the respondent was fully justified in completing the assessment in the manner done by passing the impugned order.

6. Unfortunately, the mistake committed by the Assessing Officer is to non suit the petitioner on two fresh grounds, which were not contained either in the notice dated 07.11.2017 or in the notice for personal hearing dated 16.11.2017 namely that there was no such dealer as M/s.Sri Lakshmi Traders and the tax payer identification number given in respect of M/s.Sri Lakshmi Traders pertains to one M/s.Veeramathi Amman Traders, Tirupur and that in respect of M/s.Jay Jay Agency, their registration has been canceled with effect from 26.5.2014.

7. When these two allegations have not been specifically mentioned in the earlier notices, the respondent could not have completed the assessment based on the same without liberty to the petitioner. As stated above, the petitioner failed to avail the opportunity given in the notice dated 16.11.2017. Nevertheless, when the respondent seeks to take a decision on the materials, which were not disclosed in the earlier notices, the respondent should have issued a fresh notice, given an opportunity to the petitioner and then proceeded to decide the matter. This Court is of the view that the assessment requires to be redone after affording adequate opportunity to the petitioner to establish the genuineness of the transaction.

8. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned assessment order dated 27.12.2017 as well as the notice for personal hearing dated 16.11.2017 as show cause notices and submit a comprehensive objection within a period of 15 days from the date of receipt of a copy of this order. It will be open to the petitioner to prove by documents that at the time when they had business transactions with the said two dealers, their registration was valid, the transactions were genuine and the transactions were not fake transactions. On filing of the objections, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. Till orders are passed in terms of the above directions, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (ST), Tirupur North Circle, Tirupur.

+1cc to Mr.S.Raveekumar, Advocate, S.R.No.7684

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WMP.No.2685 of 2018

GJ(CO)
RRK(26/02/2018)