In the High Court of Judicature at Madras

Dated : 20.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.11408 of 2018 & WMP.No.13316 of 2018

M/s.Zehra Impex, rep.by its
Authorized Signatory
Mr.Ayaz Ahmed ...Petitioner

Vs

The Commercial Tax Officer, Ambur
Assessment Circle, Ambur. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in TIN 33844264671/2015-16 dated 28.3.2018 and quash the same as arbitrary, illegal, unreasonable and ultra vires the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran
For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Heard both.

2. The petitioner has filed this writ petition challenging the assessment order dated 28.3.2018 passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2015-16.

3. The impugned order has been challenged on the ground that on account of a default committed by the selling dealer, the petitioner has been penalized. In this regard, the learned counsel for the petitioner has relied upon the decision of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. Tvl.Raj Bros Agencies [TCR.No.65 of 2017 dated 21.12.2017]. In fact, considering the above submissions, this Court entertained the writ petition and granted an order of interim stay on 28.4.2018 so as to enable the respondent to get appropriate instructions.

4. Today, the learned Government Advocate has got written instructions from the respondent vide letter dated 22.6.2018. On a perusal of the parawise instructions, in the first instance, this Court is of the view that they are detailed remarks given by the respondent. However, the respondent has verbatim extracted the impugned assessment order and reiterated what has

been stated therein and also quoted Section 45 of the said Act. Considering the fact that the assessment has been revised solely based upon mismatch of the details from the returns filed by the other end dealer, the assessment could not have been completed in the manner as done by the respondent.

5. Furthermore, when the petitioner produced copies of the returns filed by one M/s.M.S.R.Traders and the bank statements, which reflected the payments made to them, it is needless to state that the seller had returned the turnover of sales. Therefore, the respondent misconstrued that the petitioner is liable for tax for non payment of tax by the said M/s.M.S.R.Traders and has to suffer an order of assessment. Without conducting an enquiry, the respondent could not have completed the assessment, that too, in the manner done in this case.

6. Accordingly, the writ petition is allowed, the impugned order is set aside and it is open to the respondent to initiate fresh action after affording an opportunity of personal hearing and considering the annual reports. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer, Ambur Assessment Circle, Ambur.

+2cc to Mr.V.Sundareswaran, Advocate sr.no.48604, 32548

WP.No.11408 of 2018&
WMP.No.13316 of 2018

sv(co)
nr 13/08/2018