In the High Court of Judicature at Madras

Dated : 12.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.50296 of 2006 & MP.No.1 of 2006

M/s.Kavitha Agencies
rep. by its Prop. P.Palanisami
9/126, Parasakthi Nagar
Dadagapatty, Salem ...Petitioner

Vs.

The Commercial Tax Officer
Annathanapatty Circle
Salem ...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 the proceedings in TNGST No.2761559/00-01 dated 27.10.2006 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.V.Haribabu
Additional Government Pleader

ORDER

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader appearing for the respondent.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu General Sales Tax Act. The petitioner received a notice dated 14.03.2006 stating that the Department has an extract taken from Thirumurugha Kirupanandha Variyar Thavathiru Sundra Swamigal Medical Educational Charitable Trust, Salem and the extract reveals payment made by the educational trust to several persons including the petitioner. Further the notice states that the Vinayaka Mission group was requested to furnish the name and address of the person to whom the cheques were issued, but they have failed to produce the relevant records and reasons for giving huge amount to persons noted in the notice. Therefore, the respondent stated that since the details were not forthcoming from Vinayaka Mission Group, petitioner has to be treated as if he received the payment by way of cheque for sales of furniture to be used by the educational institutions run by the Trust. Accordingly, there was a proposal to assess the petitioner to tax for the Assessment year 2000-01 under Section 16(1)(a) of the Act. There was also a proposal to levy penalty. The petitioner was granted 15 days time to submit their objection.

3. By objection dated 04.05.2006, the petitioner stated that he is a small trader and not a manufacturer of steel furniture and the purchases effected by him are from registered dealers and he does not effect any sales outside the state. Further it is stated that the petitioner came to know that the respondent has made enquiry with Vinayaga Mission Group, Pooja Enterprises, V.Kamala Devi, V.Dinesh Kumar and Vijaya Shree Textiles and because the Trust did not produce the relevant accounts for verification, it was decided to assess the petitioner to tax and those cheques were discounted by third parties.

4. Therefore, the petitioner stated that the fact that cheques were issued to one company and discounted through others, especially with particular person, who are not bankers, would go to prove that there is something fishy and shady behind the transaction. Thus, the petitioner denies the fact of supply of furniture to the said Trust. Further, the petitioner would state that because they have relevant evidence gathered from third parties, they should be made available for cross-examination.

5. The respondent while completing the assessment, merely stated that the petitioner has not explained about the transaction and if the transaction is not one of sale, then nature of transaction could have been explained. However, the other aspect pointed out by the petitioner in the reply to the show-cause notice dated 04.05.2006 are not taken into consideration. Thus, it is evident that the respondent has misdirected himself in passing the impugned order and the decision making process is clearly flawed. When the petitioner has pointed out that the entire transaction is fishy and shady, the respondent took no steps to conduct any verification and closed the matter abruptly by a non-speaking order. Thus, the impugned order calls for interference.

In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to issue notice to the Managing Trustee of Thirumurugha Kirupanandha Variyar Thavathiru Sundra Swamigal Medical Educational Charitable Trust, Salem, Vinayaga Mission Group, Pooja Enterprises, Tmt.V.Kamala Devi, Thiru.V.Dinesh Kumar and Vijaya Shree Textiles and conduct an enquiry in the presence of the petitioner. As the above mentioned persons have already been enquired into by the Department, the respondent could have no problem in locating the above persons and their place of business. Apart from that, if any other person is required to be enquired, the said person should also be summoned and enquiry should be conducted in a fair and transparent manner in the presence of the petitioner. In any event, any one of the parties who have called upon to appear before the respondent does not appear, the respondent is entitled to issue summons to them to appear in person. After conducting an enquiry and after affording an opportunity to examine those third parties, the respondent shall afford sufficient time to the petitioner to submit further objection and thereafter, complete the assessment in accordance with law. Since there appears to be several parties involved in the matter, the Court is of the opinion that entire enquiry should be monitored. The Joint Commissioner, Commercial Taxes, Salem is directed to monitor the entire enquiry. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Commercial Tax Officer
Annathanapatty Circle
Salem.

2.The Joint Commissioner,
Commercial Taxes,
Salem.

+1cc to Mr.S.Ramanathan, Advocate, S.R.No.46040.
+1cc to the Special Government Pleader(T), S.R.No.46236.

WP.No.50296 of 2006
and MP.No.1 of 2006

KJI(CO)
BM 01/08/2018.