In the High Court of Judicature at Madras

Dated : 08.2.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.2781 of 2018 & WMP.No.3428 of 2018

Tvl.Sakthi Agencies,
rep. by its Proprietor ...Petitioner

Vs

The Commercial Tax Officer (A),
Tindivanam. ...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 order dated 03.1.2018 in TIN 33754724355/2014-15 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.M.Hariharan, AGP

ORDER

Mr.M.Hariharan, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and deals with mobile phone accessories, sim cards and recharge coupon etc.

3. The petitioner was served with the notice dated 20.11.2017 stating that when the purchase details furnished by the petitioner in the return for the assessment year 2014-15 were compared with the Departmental website, it was found that there is a difference and therefore, the purchase suppression is

treated as sales omission. Further, the respondent proposed to revise the assessment under Section 27(1)(a) of the said Act. There was also a proposal to make equal addition as well as to levy penalty.

4. The petitioner submitted their objections dated 28.11.2017, which were received by the office of the respondent on the very same day. However, the impugned assessment order has been passed stating that the petitioner has not produced any documentary evidence, such as audited balance sheet/freight charges paid receipts/loading charges paid receipts, bank statements, etc., in support of their contention.

5. The problem has arisen on account of the fact that after the respondent issued the notice dated 20.11.2017, another notice of the same date was issued containing purchase details, which have been culled out from the Departmental website.

6. The petitioner would state that both the notices are dated 20.11.2017 and that the second notice was received only subsequently.

7. However, this Court is not inclined to accept the said submission, as there is no evidence to show that the second notice was received belatedly. Even in the first notice dated 20.11.2017, this Court finds that there is an endorsement saying "as per web report, details enclosed". Therefore, in all probabilities, the petitioner was furnished with requisite information.

8. Be that as it may, considering the facts and circumstances of the case and the fact that the revision of assessment is sought to be made by obtaining details from the Departmental website, this Court is inclined to grant one indulgence to the petitioner, since the manner, in which, the assessment has been completed, is not in accordance with the guidelines suggested by this Court in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343]. For all the above reasons, the assessment requires to be redone by taking note of the guidelines suggested in the said decision.

9. In the result, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and submit their objections specifically mentioning the issues and the allegation made in the enclosure to the said show cause notice wherein the entire details regarding purchases have been given. The petitioner is directed to produce all documents in support of their claim, which shall include the audited balance sheet and the bank statements, etc. The respondent shall afford an opportunity of personal hearing

and redo the assessment in accordance with law. The objections shall be sent within a period of two weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected WMP is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

smn

To

The Commercial Tax Officer (A), Tindivanam.

+1cc to Mr.Adithya Reddy, Advocate, S.R.No.10086

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WMP.No.3428 of 2018

RRK(01/03/2018)