IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 07.06.2018
CORAM:
THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM
Writ Petition No.13603 of 2018
and W.M.P.Nos.16031 & 16032 of 2018

M/s. R.K.Motors, Rep. by its Managing Partner,
K.Balamurugan, No.58/2-A Chennai Main Road,
Villupuram 605 602, Villupuram District
... Petitioner

..vs..

The Assistant Commissioner (ST),
Villupuram - I, Villupuram,
Villupuram District ... Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN: 33384681442/2012-13, dated 09.04.2018, and to quash the same.

For Petitioner : Mr. S.Rajasekar
For Respondent : Mrs. G.Dhanamadhri, Govt. Advocate

O R D E R

Heard Mr.S.Rajasekar, learned counsel appearing for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate (Taxes), who accepts notice on behalf of the respondent. With consent of the learned counsel appearing for both sides, the writ petition is taken up for final disposal at the admission stage itself.

2. In the light of the glaring error, which is apparent on the face of the impugned assessment order, this Court is inclined to dispose of the writ petition by issuing appropriate directions. The course that this court chooses to adopt is agreeable to the learned counsel appearing for both sides.

3. Earlier, the writ petitioner has approached this Court by challenging the assessment orders, dated 31.10.2015, for the assessment years 2011-12, 2012-13 and 2013-14 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "the Act"). The Court did not set-aside the orders of assessment, but directed the petitioner to treat the assessment orders as show cause notices and also directed to submit their objections. Pursuant to the said directions, the Assessing Officer, the respondent, issued notice dated 09.04.2018, and also afforded an opportunity of personal hearing, pursuant to the notice, dated 23.03.2016. During the course of personal hearing, it appears that the respondent was convinced with the objections raised by the petitioner and

dropped all the proposals, which were contained in the earlier assessment order, dated 13.10.2015. However, while doing so, the respondent has stated that the petitioner has willfully not disclosed the sales turnover of motor vehicles' spares to the tune of Rs.49,31,373/- and this amounts to actual sales suppression with the intention to evade payment of duty. Therefore, the respondent proposed to assess the petitioner afresh for the assessment year 2012-13 under Section 27(1)(a) of the Act and also proposed to impose penalty.

4. This proposal was not found in the earlier notices, dated 27.02.2015 or 08.06.2015 or in the earlier assessment order dated 31.10.2015. In fact, the respondent himself states that there is no necessity to issue the show cause notice, because the Court had directed the earlier assessment order, dated 31.10.2015 to be treated as show cause notice. In doing so, the respondent has committed an error, in the sense that, there was no proposal made in the earlier assessment proceedings on the alleged ground of sales suppression in respect of motor vehicles' spares. Therefore, if the respondent was of the opinion that there are further reasons to revise the turnover, then the show cause notice ought to have been given. Therefore, to that extent, the impugned order suffers from violation of principles of natural justice.

5. In the light of the above, the petitioner is directed to treat the impugned proceedings, in so far as it states that there is a willful non-disclosure of sales turnover of motor vehicles' spares, as show cause notice and submit their objections within a period of ten days from the date of receipt of a copy of this order. On receipt of such objections, the respondent shall consider the plea raised by the petitioner, the documents which they may submit and redo the assessment under the said head in accordance with law.

6. The writ petition is disposed of accordingly. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

srk

To
The Assistant Commissioner (ST),
Villupuram - I, Villupuram,
Villupuram District

+1cc to M/s.R.Hemalatha, Advocate Sr.No.36023
+1cc to Special Government Pleader sR.No.35975

SV(CO)
sm:18.6.2018

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