In the High Court of Judicature at Madras

Dated : 20.6.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.14768 of 2018 & WMP.No.17461 of 2018

Tvl.Bharat Packaging,
rep.by its Proprietrix ...Petitioner

Vs

The State Tax Officer, Peddunaickenpet
Assessment Circle, No.48/39, Rajaji
Salai, Wavoo Mansion, Chennai-1. ...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 No.33900281721/2013-14 dated 10.4.2018 and quash the same as illegal, ultra vires and against the principles of natural justice.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.M.Hariharan, AGP

ORDER

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

2. The petitioner is aggrieved by the order passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2013-14.

3. The first ground of challenge to the impugned assessment order is by contending that an opportunity of personal hearing was not granted to the petitioner. This, being a mandatory requirement, would be sufficient to hold that the impugned order is in violation of the principles of natural justice. Furthermore, the petitioner relied upon certain decisions of this Court to substantiate their contention that they discharged the burden of proof by filing details of purchase bills raised by their supplier in the monthly returns, that their suppliers

had collected tax element separately showing their sales bills and that all payments for purchase consideration were made by cheque payment as provided under the Income Tax Act. It was further pointed out that if the supplier defrauded the revenue to the State Exchequer, the supplier has to be prosecuted under the Tamil Nadu Value Added Tax Act, 2006 and that the petitioner cannot be penalized.

4. The learned counsel for the petitioner has placed reliance on the decision of this Court in the case of M/s.Jinsasan Distributors Vs. CTO (CT), Chintadripet Assessment Circle, Chennai [reported in (2013) 59 VST 256], which was followed in W.P.Nos.13125 to 13127 of 2014 dated 25.7.2016 and the common judgment of the Hon'ble Division Bench of this Court in the case of AC (CT), Broadway Assessment Circle Vs. M/s.Bhairav Trading Company [W.A.No.946 of 2016 etc. cases dated 01.9.2016] and also the order of the Hon'ble Division Bench of this Court in the case of State of Tamil Nadu Vs. Tvl.Raj Bros Agencies (India) [TCR No.65 of 2017 dated 21.12.2017].

5. Considering the above, this Court is of the view that the respondent should redo the assessment after affording an opportunity of personal hearing, during which, the petitioner should produce sufficient documents to establish the genuineness of the transactions.

6. Accordingly, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within 15 days from the date of receipt of a copy of this order. On receipt of the reply, the respondent shall afford an opportunity of personal hearing, peruse the documents filed by the petitioner and if necessary, call for additional documents, take note of the legal position and pass a reasoned order on merits and in accordance with law. Till then, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To
The State Tax Officer, Peddunaickenpet Assessment Circle,
No.48/39, Rajaji
Salai, Wavoo Mansion, Chennai-1.

+1cc to Special Government Pleader Sr.No.39079
+1cc to M/s.C.Rekhakumari, Advocate SR.NO.38978 dt.31.8.2018

SPD(CO)
sm:02.07.2018

RS

WP.No.14768 of 2018&
WMP.No.17461 of 2018