In the High Court of Judicature at Madras

Dated : 25.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1568 of 2018 & WMP.No.1971 of 2018

Rayan Tile Bazaar, rep.by its
Proprietor R.Rayan Prem Kumar ...Petitioner

Vs

The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
Greams Road, Chennai-6. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN No.33241460246/2016-17 dated 11.7.2017, quash the same and further direct the respondent to redo the assessment in accordance with the law after providing sufficient opportunity to the petitioner.

For Petitioner : Mr.N.Murali
For Respondent : Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner has filed this writ petition challenging an order of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2016-17.

3. As could be seen from the impugned assessment order, though the petitioner received the revision notice dated 16.3.2017, they did not file their objections to the proposal made by the Assessing Officer nor produced any documents in support of their claim. Therefore, the respondent was fully justified in completing the assessment in the manner done in the impugned order. It is seen that the petitioner has also paid the tax and that the impugned order has been challenged only with

regard to penalty and equal time addition.

4. The question would be as to whether the petitioner should be given an opportunity to go before the Assessing Officer to put forth their submissions that their conduct was not willful. For imposition of penalty under Section 27(3) of the said Act, the Assessing Officer should record his satisfaction that escapement was due to willful non disclosure and that mere non disclosure does not automatically amount to levy of penalty. The Statute contemplates levy of penalty in cases of willful non disclosure.

5. The petitioner would state that the revision of assessment is on account of stock variation, which is bound to occur because of breakages and that the invoice, which has been raised for the full quantity for the payment made by the dealer, will be for a lesser quantity after deducting the breakages.

6. Considering the fact that the impugned order has been challenged only with regard to levy of penalty and equal time addition and that the petitioner has already paid the tax in full with interest, this Court is inclined to grant one opportunity to the petitioner to go before the Assessing Officer.

7. Accordingly, the writ petition is disposed of with a direction to the petitioner to treat the impugned proceedings as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected WMP is closed.

-s/d-
Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

RS
To
The Assistant Commissioner (CT),
Vadapalani Assessment Circle,
Greams Road, Chennai-6.
+1 CC to Mr.N.Murali,Advocate sr 6141.
+1 CC to The Spl. Govt. Pleader (T) sr 6768.

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SP(15/02/2018)