In the High Court of Judicature at Madras

Dated : 25.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1569 of 2018 & WMP.No.1972 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.33241460246/2012-13 dated 16.2.2017, 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 dated 16.2.2017 passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2012-13.

3. As could be seen from the impugned assessment order, though the petitioner received the revision notice dated 14.12.2016, they did not file their objections to the proposal made by the Assessing Officer nor produced any documents in support of their claim, thereby not cooperating with the

assessment proceedings, which has resulted in the impugned order.

4. The learned counsel for the petitioner pleads that one more opportunity may be granted to the petitioner to go before the Assessing Officer since the petitioner is in the process of filing a petition under Section 84 of the said Act for reopening the assessment under the Central Sales Tax Act, 1956 and if that is done, reversal of input tax credit under Section 19(5)(c) of the State Enactment would not arise.

5. With regard to the purchases alleged to have been effected from the registration canceled dealers, the learned counsel for the petitioner submits that the petitioner has got sufficient details to show that the purchases effected by them were from dealers, whose registration certificates are valid. Furthermore, the learned counsel for the petitioner has referred to the Hon'ble Division Bench judgment of this Court in the case of Assistant Commissioner (CT), Broadway Assessment Circle, Chennai V. Bhairav Trading Company, [reported in (2016) 96 VST 315].

6. With regard to the third issue pertaining to reversal of input tax credit as suggested by the Chartered Accountant in Form WW, the learned counsel for the petitioner, on instructions, submits that the dealer will pay the amount.

7. In the light of the above, this Court is inclined to grant one more opportunity to the petitioner, however, subject to a condition.

8. Accordingly, writ petition is disposed of with a direction to the petitioner to pay the tax towards reversal of input tax credit as suggested by the Chartered Accountant in Form WW, being a sum of Rs.19,712/- (Rupees nineteen thousand seven hundred and twelve only). In addition to that, the petitioner is directed to pay 15% of the disputed tax under the other two heads namely reversal of input tax credit under Section 19(5)(c) of the State Enactment and the purchases alleged to have been effected from registration canceled dealers, within a period of 15 days from the date of receipt of a copy of this order. If the petitioner complies with the above two conditions, they will be entitled to treat the impugned assessment order as a show cause notice and submit their objections within a period of 15 days thereafter. On receipt of the objections, the respondent shall consider the same, afford an opportunity of personal hearing and redo the assessment in

accordance with law. If the petitioner fails to comply with any one of the above conditions, the writ petition would stand automatically dismissed without further reference to this Court and the respondent is entitled to recover the tax as quantified in the impugned assessment order. No costs. Consequently, the above WMP is closed.

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

True Copy

Sub-Assistant Registrar

To

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

+1 CC to Mr.N. Murali, Advocate sr 6146.
+1 CC to The Spl. Govt. Pleader sr 6708.

WP.No.1569 of 2018&
WMP.No.1971 of 2018

BR(CO)
SP(15/02/2018)