In the High Court of Judicature at Madras

Dated : 13.07.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.17600 of 2018
and
W.M.P.No.20877 of 2018

M/s.Uniscaff Engineers
rep.by its Partner,
Mr.S.Chandrasekar ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Department of Commercial Taxes
& Registration,
Fort St.George,
Chennai-600 009

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai-600 005

3.The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
No.10, Palaniappa Maligai,
2nd Floor,
Greams Road,
Chennai-600 006 ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorarified Mandamus to call for the records relating to the impugned order of assessment passed by the 3rd respondent in TIN 33251480659/2016-17 dated 31.05.2018 received by the petitioner on 25.06.2018 and quash the same and direct the respondents to conduct enquiry with respect of the anonymous petition dated 26.11.2016 and pass fresh order after affording an opportunity of personal hearing for the assessment year 2016-17.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Ms.G.Dhana Madhri,G.A.

ORDER

Heard Mr.M.MD.Ibrahim Ali, learned counsel for the petitioner and Mr.G.Dhana Madhri, learned Government Advocate, who accepts notice on behalf of the respondents.

2.The petitioner has filed this writ petition challenging the Order of Assessment under the provisions of Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2016-17. The only ground on which the impugned order is questioned is by referring to an anonymous petition, which has been received by the Department, which paved way for a surprise inspection to be conducted in the petitioner's place of business. After the inspection was conducted, the Enforcement Wing has submitted a report and based on the Report, a notice was issued by the respondent dated 10.11.2017, proposing to revise the assessment.

3.The petitioner has submitted an elaborate reply raising various factual contentions to the said proposal. In the reply, the petitioner has asked for a copy of the petition, which was received by the Assessing Officer from the complainant. The petitioner also wanted to know the name and address of the person who gave the complaint and also the information as to whether an enquiry was made against the person, who filed the complaint.

4.It is not disputed by the petitioner that a copy of the complaint has been furnished to them. With regard to the name and address, the respondent would state that it is an anonymous petition. Whether an enquiry has been conducted against the said person or not is not the subject matter of assessment proceedings. In any event, the respondent has considered the objections and completed the assessment.

5.The learned counsel for the petitioner has referred to Paragraph No.(6) of the Assessment Order, at page No.5, and submitted that the levy of tax is based on 'assumptions and presumptions'.

6.I do not agree with the said submission, because it is only a 'passing comment' with regard to the complaint received against the petitioner. In paragraph Nos.1 to 5 at page No.5 of the Assessment Order, the respondent has given certain reasons, which are factual reasons and the correctness of the same has to be tested only before the Appellate Authority and not in Writ Petition.

7.For the above reasoning, the writ petition is disposed of as not maintainable. The petitioner is given liberty to file an Appeal before the Appellate Authority and if such an Appeal is filed within 15 days from the date of receipt of a copy of this Court, the Appellate Authority shall entertain the Appeal without rejecting the same on the ground of limitation. The Appellate Authority shall proceed to decide the matter based upon the Revision Notice, reply given by the petitioner and not in any manner to be influenced by the complaint sent by the 3rd party. No costs. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of Commercial Taxes
& Registration,
Fort St.George,
Chennai-600 009

2.The Commissioner of Commercial Taxes,
Commercial Taxes Department,
Ezhilagam, Chepauk,
Chennai-600 005

3.The Assistant Commissioner (CT),
MMDA Colony Assessment Circle,
No.10, Palaniappa Maligai,
2nd Floor,
Greams Road,
Chennai-600 006

+1cc to Mr.M.MD.Ibrahim Ali, Advocate, S.R.No.46331

+1cc to the Spl Government Pleader, S.R.No.46631

W.P.No.17600 of 2018

NA(CO)
GSP(25/07/2018)