In the High Court of Judicature at Madras

Dated : 18.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18081 of 2018 & WMP.No.21355 of 2018

Tvl.Bhawar Sales Corporation,
rep.by its Partner ...Petitioner

Vs

The Assistant Commissioner (ST),
Aminjikarai Assessment Circle,
50F, I Avenue, Anna Nagar East,
Chennai-102. ...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 dated 30.4.2018 in TIN/33951502778/2016-17 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In the light of the glaring errors, which are apparent on the face of the impugned order, the writ petition itself is taken up for final disposal even at the admission stage.

2. The respondent issued the notice dated 13.10.2017 to the petitioner proposing to revise the assessment for the year 2016-17 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, which was pursuant to a VAT audit conducted in the business premises of the petitioner during September 2017.

3. On a perusal of the said notice dated 13.10.2017, this Court finds that it is a verbatim repetition of the findings of the Audit Wing. The petitioner sent a reply dated 13.3.2018, after which, the impugned assessment order has been passed.

4. In the impugned assessment order, two defects were pointed out against the petitioner. Firstly, it has been stated that the petitioner did not file their monthly returns for the month of December 2016. This appears to be factually an incorrect statement, since the returns for December 2016 were shown to have been filed on 25.2.2017, for which, an acknowledgment receipt for filing e-returns has been filed in the typed set of papers. In fact, the respondent referred to a sworn statement, which was recorded by the Audit Party. Admittedly, on the date when the statement was recorded, the returns were already filed, that too, within the period stipulated under the Statute. Therefore, on this ground, the assessment could have been completed.

5. Secondly, with regard to the stock position, the respondent would state that the petitioner has not maintained stock register. However, in the notice dated 13.10.2017, there is a clear finding that the dealer furnished purchase and sales details from 01.4.2016 to 31.12.2016.

6. If the respondent was of the opinion that some more details are required regarding stock position, then an opportunity ought to have been given to the dealer. For the above reasons, this Court finds that the impugned order is an outcome of total non application of mind and presumably to follow the findings given by the Audit Party. Since there has not been an independent decision taken by the respondent, the impugned order calls for interference.

7. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for a fresh consideration. The petitioner is granted two weeks' time to file additional objections, after which, the respondent shall afford an opportunity of personal hearing, take a decision and pass a reasoned order without, in any manner, influenced by the findings of the Audit Wing.

-s/d-
Deputy Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (ST), Aminjikarai Assessment Circle, 50F,
I Avenue, Anna Nagar East, Chennai-102.

+1 CC to Mr. Adithya Reddy, Advocate sr 47509.
+1 CC to Govt. Pleader(T) st 48132.

WP.No.18081 of 2018&
WMP.No.21355 of 2018

SP(01/08/2018)