In the High Court of Judicature at Madras

Dated : 30.1.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.1849 of 2018 & WMP.No.2299 of 2018

M/s.Otto Clothing Private Ltd.,
rep.by its Authorized Signatory ...Petitioner

Vs

The Assistant Commissioner (CT),
Nandanam Assessment Circle,
Chennai-28. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No.33211542276/2015-16 dated 19.1.2018, quash the order passed therein and direct the respondent to pass fresh orders as per law and pass fresh orders after providing an opportunity of personal hearing by considering the representations of the petitioner on 08.12.2017 and 12.12.2017 under the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.C.Bakthasiromani

For Respondent : Ms.G.Dhana Madhri, GA

ORDER

Ms.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In the light of the glaring error in the impugned order, the writ petition itself is taken up for final disposal. By doing so, not only the assessee will be entitled to further opportunity, but it will also protect the interest of the Revenue, as the respondent has a duty to ensure that correct rate of tax is levied and collected.

2. The petitioner is a registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The petitioner is aggrieved by the assessment order dated 19.1.2018 for the year 2015-16. The challenge to the assessment order is not on merits, but it is on the ground of gross violation of the

principles of natural justice.

3. To test the correctness of the stand taken by the petitioner, this Court has examined the documents placed in the typed set of papers. The impugned assessment is a consequence of a revision notice dated 14.11.2017. As soon as the revision notice was received by the petitioner, by then, a VAT audit was conducted in the business premises of the petitioner. The petitioner sent a letter dated 05.12.2017 requesting that the proposal in the notice dated 14.11.2017 may be withheld till the VAT audit is completed and till a proposal is received from the officials of the Enforcement Wing.

4. The letter dated 05.12.2017 has been received by the Assessing Officer by endorsing the office copy with signature and date. Subsequently, another representation has been sent by the petitioner dated 08.12.2017, which appears to be an interim reply to the revision notice dated 14.11.2017. In the said letter dated 08.12.2017, the petitioner specifically sought an opportunity of personal hearing to be granted to them to explain the nature of transaction. The letter dated 08.12.2017 has also been received by the respondent by endorsing in the letter delivery book with signature and date. 5. Further, another reply dated 12.12.2017 has been submitted by the petitioner, which was also received by the respondent by affixing his signature and date wherein the petitioner explained the nature of transaction and undertook to produce credit/ledger extract, purchase bills and other records any time when called upon. Along with the reply dated 12.12.2017, the petitioner enclosed sample purchase bills for the reference of the respondent.

6. Unfortunately, while completing the assessment, the respondent did not refer to the petitioner's representation dated 12.12.2017 nor the first representation dated 05.12.2017 for deferring the proposal in the notice. That apart, this Court finds that the impugned assessment has been completed for the reason that the petitioner has not substantiated their plea with documentary evidence.

7. When the petitioner has specifically sought for an opportunity of personal hearing and when the respondent proposes to revise the turnover under Section 22(4) of the State Enactment, an opportunity of personal hearing ought to have been provided to the petitioner. Therefore, this Court does not approve the manner, in which, the impugned assessment has been completed. Considering the fact that certain reasons have been assigned in the impugned order stating that the dealer did not substantiate their plea by filing documentary evidence, this Court is of the view that impugned assessment proceedings should be treated as a show cause notice, so that the petitioner can

file a comprehensive reply covering all the points and produce necessary documents before the Assessing Officer for redoing the assessment.

8. Thus, for the above reasons, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as a show cause notice and submit comprehensive objections within 15 days from the date of receipt of a copy of this order. On receipt of such objections, the respondent is directed to fix a date for personal hearing, in which, the respondent shall peruse all the documents, hear the oral submissions of the authorized representative of the petitioner, consider all factual and legal issues raised by the petitioner and redo the assessment in accordance with law. Till then, no coercive action shall be initiated against the petitioner pursuant to the impugned order. No costs. Consequently, the connected WMP is closed.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT), Nandanam Assessment Circle, Chennai-28.

+1cc to Mr.Bakthasironmani, Advocate, S.R.No.7508

+1cc to the Government Pleader, S.R.No.7030

WP.No.1849 of 2018&
WMP.No.2299 of 2018

RRK(13/02/2018)