IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No No.30605 of 2016 &
W.M.P.Nos.26534 of 2016

Vanijax Sales Pvt. Limited
Reprsented by its Managing Director
Mr.Daniel F.Vanaik
No.343, SIDCO Industrial Estate
Ambattur
Chennai - 600 098
.. Petitioner

v.

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle
127, Second Floor, Yadhaval Street
Padi, Chennai - 600 060
.. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the files of the respondent herein in TIN/33831360448/2012-13, dated 18.08.2016 and quash the same.

For Petitioner: Mr.K.Narayanan
for Mr.N.Prasad

For Respondent : M.Hariharan
Addl. Govt. Pleader

ORDER

Heard Mr.K.Narayanan, learned counsel appearing for the petitioner and M.Hariharan learned Additional Government Pleader, appearing for the respondent.

2. The petitioner has filed this writ petition challenging the assessment order dated 18.08.2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2012-13.

3. At the time when the writ petition was entertained, this court taking note of the submission made on behalf of the petitioner, by order dated 01.09.2016, granted the following order :-

"Heard Mr.Sriprakash, learned counsel appearing for the petitioner and M/s.Vasudha Thiagarajan, learned Additional Government Pleader appearing for the respondent.

2.The order impugned is an order of assessment dated 18.08.2016 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the year 2012-13. It is pointed out by the learned counsel for the petitioner that an unsigned statement recorded by the Enforcement Wing has been referred to and relied upon by the Assessing Officer by making an erroneous observation that the unsigned statement does not alter the legal status of the statement. Further it is pointed out that the respondent has rendered a finding that the petitioner has cooked up the figures to suit their convenience forgetting that the relevant documents produced before the respondent were not related to 2013 and the question of cooking up the figures does not arise. Though in paragraph No.7 of the impugned order, the respondent accepted that the petitioner has produced all the documents there is an inconsistent statement made in paragraph No.12 of the impugned order that the petitioner has not produced the documentary evidence.

3.In the light of the above, there will be an order of interim stay.

4.The learned Additional Government Pleader appearing for the respondent is directed to file counter within four weeks.

5.List the matter on 20.10.2016.

4. The court assigned certain reasons as to why this court was prima facie satisfied for grant of an interim order. This is with a view to inform the Assessing Officer to submit a proper reply in the form of counter affidavit. Subsequently, the matter has been adjourned on several dates for the past two years and on all these hearing, representation was made on behalf of the respondent requesting time to file counter. The position today is that the respondent has neither filed a counter affidavit nor furnished any written instructions to the learned Additional Government Pleader. Thus, the court is inclined to proceed with the matter on the available materials.

5. The respondent in the impugned order in paragraph-7, has referred the following:-

"7. In support of their contention, the dealers have filed Balance Sheet for the year 2011-12, Purchase Register, Sales Register and Stock Statement for the month of May 2012. They have averred there is no basis whatsoever for the amounts mentioned in the pre-assessment notice dated 15.9.15. The copy of stock statement as on 31.5.12 given to their bankers viz. State Bank of India, SIDCO Industrial Estate Branch, Ambattur, Chennai 98 on 11.6.2012 was filed. They have also filed the certificate issued by Tvl. Sundar & Co., Chartered Accountants, Chennai in support of their stand."

6. Having accepted that the petitioner has filed necessary documents, there is a statutory duty cast upon the respondent, who is the Assessing Officer, to consider the same and pass orders on merits.

7. Unfortunately, the respondent completed the assessment by observing that the petitioner has not produced any document or original document in support of their contention. Furthermore, the respondent would state that whatever the petitioner has stated is liable to be rejected as afterthought, since they did not do so before the Enforcement Wing. This observation is wholly unsustainable and clearly shows that the respondent is not aware of the legal position that whatever has been said before the Enforcement Wing cannot operate as an estoppel against the petitioner while replying to the revision notice issued by the respondent. Furthermore, the statement, which was prepared by the Enforcement Wing, was not signed by the petitioner, therefore, such statement would not bind the petitioner. These are all elementary legal principle which the respondent should have noted. Thus, for the above reasons, the impugned assessment order is wholly unsustainable.

8. In the result, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall issue fresh notice and proceed in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Rj

To

The Assistant Commissioner (CT)
Pattaravakkam Assessment Circle
127, Second Floor, Yadhaval Street
Padi, Chennai - 600 060

+1cc to The Special Government Pleader(Taxes) sr.39075
+1cc to Mr.N.Inbarajan, Advocate sr.no.38860

W.P.No.30605 of 2016 &
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ss(co)
nr 04/07/2018