In the High Court of Judicature at Madras

Dated : 05.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2674 of 2018

Anand IT Solutions Private Ltd.,
rep.by its Director Pankaj Kothari. ..Appellant/ Petitioner

Vs

The Assistant Commissioner (CT),
Chepauk Assessment Circle,
No.1, Greams Road, Chennai-6. ...Respondent / Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 20.8.2018 made in WP.No.40400 of 2016 and WMP.34471/2016.

WP.NO.40400 OF 2016:

Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the case and to quash impugned order passed in TIN 33230662572/ 2013-14 dated 06.04.2016 by the Respondent and further direct the respondent to re-do the assessment after providing cross examination of Mr.P.R. Babu, Proprietor of M/s. Arthi Impex, Arakonam and Mr. Anil, Proprietor of M/s. Arthi Impex, Velachery and any other person necessarily to determine the nature of the issue.

For Appellant : Mr.R.Senniappan
For Respondent : Mr.Mohammed Shaffiq, SGP
assisted by Mrs.G.Dhana Madhri, GA

JUDGMENT

Judgment was delivered by T.S.SIVAGNANAM,J

This appeal has been filed by the appellant challenging an order dated 20.8.2018 in W.P.No.40400 of 2016.

2. The appellant filed the said writ petition challenging an order of assessment dated 06.4.2016, passed

under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter called the Act), for the assessment year 2013-14.

3. The main ground canvassed before the learned Single Judge was that the appellant's request for cross examination of the proprietor of one M/s.Arthi Impex vide request dated 05.2.2016 was not considered and that therefore, there had been a violation of the principles of natural justice.

4. It appears that when the said writ petition was pending, a direction was issued to the Assessing Officer to file an affidavit in support of his stand that no such request was ever received from the appellant/dealer. It also appears that an affidavit was filed and by then, the concerned officer retired. Thereafter, the matter was finally heard by the learned Single Judge. The Additional Advocate General, who appeared before the learned Single Judge, had produced the original file for perusal. The learned Single Judge also found that there was no such request dated 05.2.2016 made by the appellant available in the file. Therefore, the learned Single Judge opined that there is a dispute with regard to the factual issue and accordingly, held that the appellant/dealer should approach the Appellate Authority and ultimately did not entertain the said writ petition, but disposed of the same by giving liberty to the appellant to file an appeal within a time frame. The Appellate Authority was also directed to take up the appeal on file without reference to the question of limitation.

5. The learned counsel for the appellant contends that the appellant filed another writ petition in W.P.No.10981 of 2017 challenging the assessment order dated 28.6.2016 under the provisions of the Act for the assessment year 2013-14 and it was allowed by order dated 14.6.2017 by remanding the matter to the Assessing Officer for a fresh consideration. Therefore, it is submitted that the assessment for the year 2013-14 may be set aside and the matter may be remanded to the Assessing Officer for a fresh consideration by taking note of the said order dated 14.6.2017.

6. We have perused the said order dated 14.6.2017 in W.P.No.10981 of 2017 and we find that the respondent therein admitted that the appellant had filed their objections on 04.4.2016 to the revision notice in the Tapal Section of the office of the Assessing Officer. However, the same was not brought to the notice of the Assessing Officer before passing the impugned order therein. Therefore, it was submitted that the matter might be remanded to the Assessing Officer for considering the matter afresh. Based on such submission, the learned Single Judge allowed W.P.No.10981 of 2017 vide order dated

14.6.2017.

7. In our considered view, the reliance placed on the order dated 14.6.2017 made in W.P.No.10981 of 2017 can, in no way, advance the case of the appellant before us. We find that the reasons assigned by the learned Single Jude in the impugned order is perfectly legal and valid and the impugned order calls for no interference.

8. The contention of the appellant is that the third party dealers namely M/s.Arthi Impex and others have to be cross examined, because, based on certain transactions done by them, the assessment was sought to be revised.

9. In our considered view, this issue can very well be raised before the Appellate Authority and if, in the opinion of the Appellate Authority, the third party dealers should be made available for cross examination, he can very well pass appropriate orders and he is also well within his jurisdiction to remand the matter to the Assessing Officer, if he considers it appropriate.

10. For the above reasons, the writ appeal is dismissed. No costs.

11. The time for filing the appeal before the Appellate Authority is extended by four weeks from the date of receipt of a copy of this judgment and if the appeal is filed before the Appellate Authority, it shall be taken on file without reference to the question of limitation.

Sd/-
Assistant Registrar(CS vi)

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT), Chepauk Assessment Circle, No.1, Greams
Road, Chennai-6.

+2cc to Mr.R.Senniappan , Advocate SR.No. 83827,84578
+1 CC TO GOVERNMENT PLEADER SR.NO. 84194

WA.No.2674 of 2018

ASK(02/01/2019)