In the High Court of Judicature at Madras

Dated : 21.12.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.2780 of 2018

M/s.Olive Agencies, rep.by
its Proprietor S.Saravanan ..Appellant/Petitioner

Vs

The Additional Deputy Commercial
Tax Officer, office of the Commercial
Taxes Department, Commercial
Taxes Department of Puducherry,
Puducherry. ..Respondent/Respondent

APPEAL under Clause 15 of the Letters Patent against the order dated 14.11.2018 made in W.P.No.29652 of 2018. Petition under Article 226 of the Constitution of India to issue a writ of mandamus directing the respondent to accept the statutory forms and revise the Central Sales Tax Assessment Order No.34480023770/2016-17 dated 09.05.2018 and refund a sum of Rs.15,00,000/- (Rupees Fifteen Laksh) paid as tax.

For Appellant : Mr.P.Jitendrakumar

For Respondent : Mr.J.Kumaran, AGP (Puducherry)

Judgment was delivered by T.S.SIVAGNANAM,J

This is an appeal filed by the assessee against the order dated 14.11.2018 passed by the learned Single Judge in W.P.No.29652 of 2018.

2. The said writ petition was filed by the assessee challenging the assessment order dated 09.5.2018 under the provisions of the Central Sales Tax Act, 1956 (for brevity, the CST Act) for the year 2016-17.

3. The assessee is a dealer in automobile spares and is registered on the file of the respondent under the provisions of the Puducherry Value Added Tax Act, 2007 and the CST Act. The

assessee challenged the said assessment order dated 09.5.2018 on two grounds namely on the ground of violation of the principles of natural justice, as no opportunity was granted and no personal hearing was granted and also on the ground that the said order dated 09.5.2018 was served on the assessee on 09.7.2018 when the assessee appeared before the Assessing Officer and produced the original Form F declarations against stock transfer of goods.

4. It is seen that the assessee initially produced Form F declarations. However, the Department pointed out that those declarations were bogus. Therefore, the assessee took necessary steps to obtain the original Form F declarations from the web portal of the Commercial Taxes Department of the Government of Tamil Nadu and submitted a representation dated 29.6.2018, which was received by the office of the respondent on 09.7.2018, as could be seen from the signature and seal.

5. It is the specific case of the assessee that when the assessee submitted the Form F declarations on 09.7.2018, simultaneously the Assessing Officer, in turn, handed over the assessment order dated 09.5.2018. Hence, it is submitted that the assessment requires to be redone after due opportunity to the assessee and taking into consideration the original Form declarations.

6. The learned Single Judge, by the impugned order, directed the assessee to avail the appeal remedy.

7. Before us, the learned counsel for the assessee – appellant has reiterated the submissions made before the learned Single Judge and contended that the impugned order, though dated 09.5.2018, was served on the assessee on 09.7.2018 and that it had been passed in utter violation of the principles of natural justice.

8. The learned Additional Government Pleader (Puducherry) accepting notice for the respondent would submit that all these grounds can very well be canvassed by the assessee before the Appellate Authority and that therefore, the order passed by the learned Single Judge is just and proper.

9. After considering the submissions made by the learned counsel on either side and carefully perusing the materials on record, we find that initially, the Form F declarations, which were given by the assessee, were found to be bogus. Therefore, the appellant, having found that they were cheated, approached the Authorities of the Government of Tamil Nadu and obtained the original Form F declarations through the on line portal of the Commercial Taxes Department of the Government of Tamil Nadu.

When the original Form F declarations were submitted to the Assessing Officer on 09.7.2018, by then, the assessment was completed.

10. Though the assessee stated that the assessment order dated 09.5.2018 was served on 09.7.2018 only in person, there is no proof to substantiate the same. Be that as it may, the purpose for issuing the Form F declarations is to avail concessional rate of tax. This is provided under the Statute and therefore, the Assessing Officer, on a technical plea, cannot refuse to accept the Form F declarations. In fact, the Commissioner of Commercial Taxes, Commercial Tax Department, Government of Tamil Nadu issued a circular stating that the Form F declarations can be accepted by the Assessing Officer even after completion of assessment. Therefore, we are of the view that one opportunity can be granted to the appellant to go before the Assessing Officer to submit the Form F declarations and put forth their contentions, so that the assessment can be done in a proper manner.

11. For the above reasons, the writ appeal is allowed and the order passed in the writ petition dated 14.11.2018 is set aside. The assessee is directed to treat the assessment order dated 09.5.2018 as a show cause notice and submit their objections within 15 days from the date of receipt of a copy of this judgment. Along with the objections, the assessee shall submit the original Form F declarations. On receipt of the objections along with the original Form F declarations, the Assessing Officer shall afford an opportunity of personal hearing and redo the assessment on merits and in accordance with law. Till such orders are passed, no coercive action shall be initiated.

12. The learned counsel for the appellant submits that the bogus form F declarations were given to them by the consignee and that they had no knowledge about the Forms.

13. It is made clear that if bogus forms were generated by the consignee or any other person, the matter has to be investigated. Therefore, we direct the respondent to investigate into the matter and address to the appropriate Authorities, so as to see that the erring persons are brought to books. No costs.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

RS

To
The Additional Deputy Commercial Tax Officer, office of the Commercial
Taxes Department, Commercial Taxes Department of Puducherry,
Puducherry.

+2cc to Mr.K.Senguttuvan, Advocate SR.No.89735

+1cc to Government Pleader (Pondy) SR.No.89820

W.A.No.2780 of 2018

VGI(CO)
GMY(22/01/2019)