IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 20.06.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.5341 of 2013
and
M.P.No.1 of 2013

M/s.Young Computers (India)Pvt. Ltd.,
Old No.43/3, New No.52/3,
11th Avenue, Ashok Nagar,
Chennai-600 083. ...Petitioner

-Vs-

The Assistant Commissioner (CT),
Saligramam Assessment Circle,
Chennai-600 083. ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, calling for the records of the impugned order in TIN 33151420186/2009-10 dated 11.02.2013 received by the petitioner herein on 21.02.2013 and to quash the same.

For Petitioner : Mr.J.Poojesh
for Mrs.Aparna Nandakumar

For Respondent : Mrs.Dhanamadhri, GA

O R D E R

When the Authorities proposed to disallow the claim of the concessional rate of tax at 4% and assessed the petitioner's turn over at the rate of 12.5%, a revision notice dated 30.10.2012 was issued on the petitioner and consequently, the impugned order dated 11.02.2013 was issued redetermining the tax amount, along with the proposed penalty, which is under challenge in the present Writ Petition.

2. Heard Mr.J.Poojesh, learned counsel for the petitioner and Mrs.Dhanamadhri, learned Government Advocate appearing on behalf of the respondent.

3. According to the learned counsel for the petitioner, a revision notice dated 30.10.2012 was received by them on

24.01.2013, pursuant to which, they had also given their objections on 12.02.2013, specifically mentioning that the earlier notice was received by them only on 24.01.2013. Subsequently, the impugned order was also received by them on 21.02.2013 though it is dated 11.02.2013. Hence, the learned counsel would submit that even before the expiry of 15 days notice period and without any enquiry, the impugned order came to be passed.

4. The learned Government Advocate on the other hand, objected to such a submission and by reiterating the averments made in the counter affidavit, submitted that the petitioner had not filed any reply for the revision notice issued and since the department had no other alternate, had confirmed the proposal for revision, which is not arbitrary. In view of the failure on the part of the petitioner herein to reply to the notice in time, the Authorities were justified in passing the impugned order.

5. Without going into the factual aspect as to the date on which the notices were received or despatched, it is seen that the objections raised by the petitioner in his reply dated 12.02.2013 is that the sales turn over of Rs.88,67,335/- are only sales of Information Technology products and therefore, the tax that was assessed at 4% is in order. They had also brought to the notice of the authorities that as the computers, peripherals and spares fall under Information Technology products Schedule 1B, the tax already assessed at 4% was in order and therefore, the proposal to reassess the same at the rate of 12.5% is not justified. Since the petitioner's claim of having received the notice belatedly, though disputed by the learned Government Advocate appearing on behalf of the respondents, I do not wish to go into these facts but by taking into consideration that the petitioner seems to have raised valid objection, which of course, requires to be considered by the Authorities, this Court is of the view that the petitioner can be given an opportunity to raise his objections once again before the respondents herein.

6. In the light of the above observations, the impugned order dated 11.02.2013 on the file of the respondent herein is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is also at liberty to make a fresh representation raising his objections along with the copy of this order and on receipt of such objections, the respondent herein shall pass appropriate orders in accordance with law, within a period of three months from the date of receipt of such objections.

7. With the above observations and direction, the Writ

Petition stands disposed of. Consequently connected Miscellaneous Petition is closed. No costs.

DP

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To
The Assistant Commissioner (CT),
Saligramam Assessment Circle,
Chennai-600 083.

+1cc to M/s.Aparna Nandakumar, Advocate, SR.No.51016
+1cc to the Spl.Govt.Pleader, Vide Sr.No.51319

W.P.No.5341 of 2013
and
M.P.No.1 of 2013

Kak(26/07/2019)