IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATE: 28.06.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.No.18152 of 2019
&
W.M.P.No.17520 of 2019

M/s.Swetha Textiles
Represented by its Proprietress
Mrs.S.Maheshwari
No.6/1, 1st Floor, 5th Street
S.V.Colony East
Tirupur - 641 602 .. Petitioner

Vs.

The Assistant Commissioner (ST)
Lakshminagar Assistant Circle,
Tiruppur. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of Writ of Certiorari to call for the impugned proceedings of the respondent in TIN 33226278538/2016-2017 and quash the order dated 2.5.2019 as passed contrary to the law laid down by the Hon'ble Madras High Court in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283 and by the Division Bench of the Madras High Court in the case of State of Tamil Nadu Vs. Infiniti Wholesale Limited reported in 99 VST 341 and also passed in violation of the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

Mr.P.Rajkumar, learned counsel on record for writ petitioner and Ms.G.Dhanamadhri, learned Government Advocate on behalf of lone official respondent are before this Court.

2.With consent of learned counsel on both sides, the main writ petition itself is taken up, heard out and is being disposed of.

3.Entire writ petition turns on a very narrow compass.

4.This writ petition arises under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)' which shall hereinafter be referred to as 'TNVAT Act' for brevity.

5. Writ petitioner is a dealer, who filed monthly returns under Section 21 of TNVAT Act and there was deemed assessment, is learned counsel's say. Learned counsel for writ petitioner points out that there was an audit. Post audit, it is the case of the Revenue that it came to light that the selling dealer has not filed returns for the months of February and March 2017, but the writ petitioner has availed 'Input Tax Credit' ('ITC' for brevity) resulting in ordering of reversal of ITC to the tune of little over Rs.1.45 lakhs and imposed 150% penalty thereon.

6.Short point is, no proposal was given to the writ petitioner and the writ petitioner was not given any opportunity to send objections. It is seen that prior to the impugned order, a notice dated 28.03.2019 has been sent by the Revenue to the writ petitioner, but in that notice it has been stated that ITC claim made by the writ petitioner is not in order. The notice straight away determines that the writ petitioner has a liability of Rs.1,45,071/- and more importantly, it calls upon the writ petitioner to pay the aforesaid tax liability. Therefore, the impugned order does not qualify as a proposal or notice giving an opportunity to the writ petitioner to file objections. In this view of the matter, the averment in the impugned order that the dealer has not filed objections within the given time is clearly untenable.

7. As the entire matter turns only on aforesaid lone issue of opportunity not being given to the writ petitioner to object, this Court is of the considered view that it would serve the ends of justice to pass an order in the following manner:

a) Impugned Assessment Order dated 02.05.2019 shall be treated as a proposal calling for objections;

b) Writ petitioner shall file objections together with all supporting documents to the above proposal within a fortnight from today i.e., on or before 11.07.2019.

c) Thereafter, at the discretion of the respondent, a personal hearing may be given to the writ petitioner depending on the nature of objections;

d) The Respondent shall thereafter either confirm the impugned revised Assessment Order, withdraw the same or issue a fresh revised Assessment Order depending on the objections being considered by the respondent.

e) Aforesaid exercise shall be completed as expeditiously as possible and in any event within 8 weeks from the date of receipt of this order.

f) Until the aforesaid exercise is completed, the impugned order, which has been treated as proposal calling for objections shall be kept in abeyance.

This writ petition is disposed of with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//
Sub Assistant Registrar

gpa

To

The Assistant Commissioner(ST),
Lakshminagar Assistant Circle,
Tiruppur.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.53833
+1cc to the Government Pleader, S.R.No.54604

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NRL(CO)

RRS(05/08/2019)