IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.12.2020

CORAM

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P. No.25435 of 2019
and WMP.Nos.24965 & 24966 of 2019

Vadakken Gold Exports (P) Ltd.,
No. 8/ 256-1-A Thottan Petta,
East Fort (P.O.), Thrissur,
Kerala - 680005 Rep. by its Managing Director
Mr. Raphel Vadakken

..Petitioner

Vs.

1 State of Tamil Nadu,
Rep. by its Principal Secretary to
Government, Commercial Taxes Department,
Secretariat, Chennai - 600009.

2 The Assistant Commissioner,
Velandipalayam Circle,
Coimbatore - 641 018.

..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order in TIN 33746204629/ 2014-15 dated 28.06.2019 issued by the 2nd respondent and quash the same and direct the 2nd respondent not to proceed with any coercive steps for recovery of the tax and penalty demanded in the order dated 28.06.2019 and provide copies of the information/ report relied on in the order and to pass a fresh assessment order after affording an opportunity of personal hearing to the petitioner to state its case.

For Petitioner : Mr.P.Rajkumar

For Respondents : Ms.G.Dhanamadhiri,
Government Advocate.

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Ms.G.Dhanamadhiri, learned Government Advocate for the respondents.

2. The impugned order dated 28.06.2019 has been passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2014-15 and the petitioner challenges an addition to turnover on account of closing stock sales allegedly not reported. Show cause notices were issued calling for an explanation in regard to the closing stock and the petitioner has also duly replied to the same explaining that the turnover sought to be taxed now had been offered to tax in the returns for the subsequent period.

3. For the first time, however, in the order of assessment, the Assessing Officer refers to a visit by the Enforcement Authorities. According to him, official of the Enforcement Department have visited the petitioner's premises, coming to the conclusion that the premises had been vacated in December 2014. Thus, according to him, there is no merit in the explanation offered by the petitioner to the effect that the turnover proposed to be taxed had been offered to tax in the subsequent returns. Without stating anything on the merits, I am inclined to accept the argument that the assessing authority refers to the visit by the Enforcement Authorities for the first time only in the order of assessment. The assessee has not been put to notice as far as this aspect is concerned.

4. In the counter, the Assessing Authority refers to a field audit conducted between 08.06.2015 and 20.06.2015 wherein, the officials allegedly identified certain defects in regard to the petitioners' business activities. The counter also states that the officials had come to a conclusion that the petitioner has vacated the place of business six months ago.

5. How these conclusions have been arrived at is a mystery. What is clear and admitted is that this aspect is figured for the first time only at the stage of assessment and for this reason the impugned order of assessment is liable to be set aside insofar as there is a violation of principles of natural justice and I do so. The 2nd respondent may, if he is so inclined, issue a show cause notice on this aspect, supply all materials that the revenue relies on within a period of three (3) weeks from today. If a notice is issued within a period of three (3) weeks from today, then the petitioner will reply to the same and further proceedings will be taken up in this regard and finalised.

6. With the aforesaid direction, this writ petition is disposed. Connected Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1 The Principal Secretary to Government, Commercial Taxes Department, Secretariat, Chennai - 600009.

2 The Assistant Commissioner, Velandipalayam Circle, Coimbatore - 641 018.

+1cc to the Special Government Pleader(Taxes), S.R.No.41654

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cp(CO)

rv(20/01/2021)