IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2021

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.26423 of 2012
and M.P.No.1 of 2012

M/s.ATC India Tower Corporation Private Limited,
(Formerly XCEL Telecom Private Limited),
represented by its Assistant Manager,
Mr.M.Venkatasubramanian,
No.56.Omkar building, 2nd Floor, North Boag Road,
T-Nagar, Chennai - 600 017. ... Petitioner

Vs.

The Commercial Tax Officer,
Office of the Assistant Commissioner,
T.Nagar (East) Assessment Circle,
No.46, Greenways Road, Chennai - 28. ... Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India to issue of Writ of Certiorari to call for the records comprised in impugned notice TIN No.33701562328/2008-09 to 11-12 and (CT) CST No.870334, dated 30.08.2012 on the file of the respondent and to quash the same as arbitrary, illegal and without jurisdiction.

For Petitioner : Mr.Mohammed Shaffiq

For Respondent : Mr.V.Veluchamy
Government Advocate

O R D E R

The present writ petition is filed challenging the order impugned issued in proceedings dated 30.08.2012.

2. The petitioner M/s.ATC India Tower Corporation Private Limited, is a registered dealer under the provisions of TNVAT Act and CST. The petitioner is engaged in the business of providing passive telecom infrastructure support services to the telecom operators. The petitioner filed the writ petition challenging the impugned notice issued for the period 2008 - 09 to 2011 - 12 on the limited ground that it was issued with prejudged and foreclosed mind.

3. Perusal of the order impugned would reveals that the revised notice was issued with reference to the incomplete and incorrect returns filed and the respondents found that the petitioners had filed monthly returns and reported as NIL turnovers for all years. On scrutiny of the monthly returns it is found that the dealers have not disclosed the taxable turnover in the monthly returns and the tax liability. The respondent issued the notice furnishing all the details and a final opportunity is provided to the petitioner to submit their objections, if any within 15 days on receipt of the notice. Thus it is a revised notice issued by the respondents in order to provide a opportunity to the petitioner to submit their objections in respect of the factual inferences found by the respondent Authorities. Under these circumstances, the very interestability of the writ petition itself is to be considered by this Court.

4. No writ against a show-cause notice is entertainable. The writ against the show-cause notice needs to be entertained only if the said show-cause notice is issued by the incompetent Authorities having no jurisdiction or an allegation of malafides are raised and in such an event, the authority against whom such an allegation is raised shall be impleaded as a party respondent in its personal capacity in writ proceedings. Thus, in all circumstances, show-cause notices issued are to be responded and the authorities are bound to consider the objections, explanations and documents and thereafter, take a decision and pass orders by affording the opportunity to the assessees concerned.

5. This being the procedures to be followed, at the stage of show-cause notice, the petitioner cannot be construed as aggrieved person as far as the merits involved in the allegations.

6. This Court cannot undertake the process of adjudication of disputed facts on merits. Such an exercise is to be done by the Authorities Competent, based on the documents and evidences available. The power of judicial review under Article 226 of the Constitution of India, scrutinize the processes through which a decision is taken by the Authorities in consonance with the provisions of the statutes and the Rules but not the decision itself. Therefore, the exercise of adjudication of facts must be drawn by the Authorities Competent and all the grounds raised with reference to the merits in the writ petition, deserves no adjudication by this Court and the petitioner has to submit all the grounds and objections before the respondent enabling them to consider and pass orders by following the procedures contemplated.

7. In this view of the matter, this Court is of an opinion that the petitioner has not raised any acceptable ground regarding the jurisdiction and malafides. Thus, the petitioner has to respond to the impugned show-cause notice by filing their objections and materials, if any and in the event of receiving the said objections, the respondents are bound to consider the same by providing an opportunity to the petitioner and take a decision and pass final orders on merits and in accordance with law as expeditiously as possible.

8. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Pns
To

The Commercial Tax Officer,
Office of the Assistant Commissioner,
T.Nagar (East) Assessment Circle,
No.46, Greenways Road, Chennai - 28.

+1 cc to Spl Government Pleader(Taxes) Sr.No. 32670

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SR II(CO)
A.SK(06.08.2021)