IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-09-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.19052 of 2021
And
WMP Nos.20324 and 20326 of 2021

M/s.CHENNAI DIGITAL TECHNOLOGIES,
Represented by its Proprietor,
Mr.M.Jayaprakash,
No.19D, Professional Courier Upstairs,
Kallakurichi Taluk and
District-606 202. .. Petitioner

vs.

The Commercial Tax Officer (Addl.),
Kallakurichi,
Kallakurichi District. .. Respondent

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records relating to the impugned proceedings made in TIN No.33024784945/2015-16 dated 08.12.2016 in so far as levying penalty under Section 27(3)(c) of Tamil Nadu Value Added Tax Act, 2006 is concerned and quash the same.

For Petitioner : Mr.R.Thamaraiselvan

For Respondent : Mr.S.J.Mohamed Sathik,
Government Advocate.

O R D E R

The notice, dated 08.12.2016, issued by the respondent-Commercial Tax Officer (Addl.), Kallakurichi District, is under challenge in the present writ petition.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner-Company files its returns to the respondent periodically. The petitioner-Company filed its

returns for the assessment year 2015-2016. On submission of returns, the respondent issued impugned notice dated 08.12.2016, as if the petitioner-Company has not furnished the details of certain purchases for the assessment year 2015-2016.

4. This Court is of the considered opinion that the impugned notice speaks that the petitioner-Company may file its objections, if any, on the proposals stated in the impugned notice in writing or in person with documentary evidences before the respondent, within a period of 15 days from the date of receipt of the notice. Thus, it is a show cause notice issued providing an opportunity to the petitioner-Company to submit their objections, if any, with documentary evidences. Instead of submitting objections/documentary evidences etc., the petitioner-Company has chosen to file the present writ petition.

5. No writ against a show cause notice needs to be entertained in a routine manner. A writ against a show cause may be entertained only if the notice has been issued by an incompetent Authority having no jurisdiction directly in violation of any provisions of the Act. A writ may be entertained, if any allegation of mala fides are raised. In such circumstances, the allegation of mala fides raised against an Authority must be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any one of these grounds, no writ can be entertained as against the show cause notice.

6. The violation of principles of natural justice has been raised in almost all the writ petitions. Even in such cases, where the jurisdiction point is raised, it is to be stated in the objections and the Authority Competent is bound to consider such objections. If an order is passed and the Assessee is not satisfied, then they are bound to prefer an appeal as contemplated under the Act.

7. Contrarily, entertaining a writ petition against the show cause notice is not preferable and the disputed facts between the parties cannot be adjudicated in the writ proceedings by the High Court under Article 226 of the Constitution of India. All such facts are to be adjudicated with reference to the documents and evidences made available and therefore, the contentions raised on merits, cannot be considered at all.

8. The impugned notice contains certain proposals and the respondent has clearly stated that the petitioner-Company may file its objections in writing or in person with documentary evidences, within a period of 15 days from the date of receipt of the notice.

9. This being the scope of the impugned notice, the petitioner-Company is at liberty to submit its objections along with documentary evidences, if any, before the Competent Authority and in the event of filing any such objections, the Authority Competent has to consider the same on merits and in accordance with law and pass appropriate orders.

10. With the above directions, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Svn

To

The Commercial Tax Officer (Addl.),
Kallakruichi,
Kallakurichi District.

+1cc to the Special Government Pleader (Taxes) Sr No.46228

WP No. 19052 of 2021

KSM (CO)
PR (22/09/2021)