IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-09-2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP No.19124 of 2021
And
WMP No.20407 of 2021

Shapoorji Pallonji and Company Private Limited,
Represented by its General Manager
(Accounts and Administration),
SP Infocity, Module 4-A,
2nd Floor, A Block,
40, MGR Salai, Kandanchavadi,
Perungudi,
Chennai-600 096.

.. Petitioner

vs.

1. The State Tax Officer (Intelligence) FAC,
   Collection and Arrear,
   O/o.The Deputy Commissioner (ST) (Intelligence),
   Commercial Taxes Building,
   Integrated Master Plan Collectorate Complex,
   Villupuram-605 002.

2. The Deputy Commercial Tax Officer,
   Ranipet in Checkpost,
   Serkadu,
   Ranipet.

.. Respondents

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 on the files of the first respondent in his notice GDN No.49/2012-13/RC.A7/1938/2019 dated 31.03.2021 and quash the same as illegal and without jurisdiction.

For Petitioner : Mr.R.Kumar

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

O R D E R

The notice, dated 31.03.2021, issued by the first respondent-State Tax Officer (Intelligence) FAC, is under challenge in the present writ petition.

2. The petitioner is a Company registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and also a registered dealer under the Central Sales Tax Act, 1956.

3. The petitioner is engaged in the business of works contract and executed work with various Companies.

4. The writ petition is filed challenging the notice by raising the disputed facts and merits regarding the case of the petitioner.

5. Perusal of the impugned notice reveals that with reference to the letter dated 20.09.2016, the proceedings of the Deputy Commercial Tax Officer, Ranipet, the petitioner is informed to pay compounding fee of Rs.8,66,074/- under Tamil Nadu Value Added Tax Act, 2006.

6. The petitioner was informed through the impugned notice either to file any material evidence of appeal preferred in this regard or in alternate, to make payment of such compounding fee within 15 days from the date of notice.

7. The contents of the notice impugned would reveal that the petitioner is provided with an opportunity either to file material evidence or to pay the compounding fee.

8. The reference made is the order passed by the Deputy Commercial Tax Officer in proceedings dated 20.09.2016. Thus, the petitioner-Company has to submit its explanations/material evidences, if any, before the respondents with clarifications. If at all any appeal is filed against the compounding fee or otherwise, the details are also to be provided.

9. Contrarily, the High Court, at this juncture, cannot adjudicate the disputed facts as raised by the petitioner in this writ petition.

10. 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.

11. 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.

12. 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.

13. In view of the facts and circumstances, the petitioner is at liberty to submit any material evidence of appeal or submit explanations to the notice, enabling the Authorities to consider the same.

14. Contrarily, the High Court cannot adjudicate such disputed facts in the writ proceedings.

15. With the above observations, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

Svn

To

1. The State Tax Officer (Intelligence) FAC,
   Collection and Arrear,
   O/o.The Deputy Commissioner (ST) (Intelligence),
   Commercial Taxes Building,
   Integrated Master Plan Collectorate Complex,
   Villupuram-605 002.

2. The Deputy Commercial Tax Officer,
   Ranipet in Checkpost,
   Serkadu,
   Ranipet.

+1cc to the Special Government Pleader (Taxes), S.R.No.46231

WP 19124 of 2021

SPD(CO)
SU(24/09/2021)