IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.01.2021

CORAM

THE HON'BLE MR. JUSTICE C.SARAVANAN

W.P. No. 10074 of 2017
and
W.M.P. No. 11064 of 2017

M/s.Pioneer Leder Tex Pvt. Ltd.,
Represented by its Director
Mr.A.Mohamed Farook,
No.196, Sipcot Industrial Complex,
Ranipet,
Vellore District - 632 403. ... Petitioner

Vs

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Commercial Taxes
and Registration,
Ft.St.George, Chennai - 600 009.

2.The Principal Secretary/Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
Enforcement Wing, Vellore.

4.A.Sri Sai Murugan,
The Commercial Tax Officer
(Enforcement-CEW), Vellore.

5.J.Saravanan,
The Deputy Commercial Tax Officer
(Enforcement-CEW-1),
Vellore.

6.E.Ravi Kumar,
The Deputy Commercial Tax Officer
(Enforcement),
Roving Squad, Vellore. ... Respondents

Page numbers

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the Notice issued by the 4$^{th}$ respondent in his Notice No.TIN 33334282266/2016-2017 dated 07.11.2016 and quash the same and to direct the 3$^{rd}$ respondent to conduct the VAT Audit as per Section 64(4) of the TN VAT Act.

For Petitioner : Mr.A.S.Mujibur Rahman

For Respondents: Mr.R.Swarnavel
Government Advocate

ORDER

The petitioner has filed the present writ petition for a certiorarifed mandamus, to call for the records relating to the impugned notice dated 07.11.2016 issued by the 4$^{th}$ respondent bearing Notice No. TIN 33334282266/2016-2017, quash the same and direct the 3$^{rd}$ respondent to conduct fresh VAT Audit as per Section 64(4) TNVAT Act, 2006.

2. The writ petition proceeds on premises that the VAT Audit to be conducted by the 3$^{rd}$ respondent/Joint Commissioner (CT) (Enforcement Wing), Vellore, was contrary to Section 64(4) of the TNVAT Act, 2006.

3. The relevant portion of the impugned notice reads as under:-

> "It is informed that based on the orders issued by the Principal Secretary/Commissioner of Commercial Taxes, Chennai in the reference first cited, the Joint Commissioner (CT) (Enf), Vellore has issued Authorization to conduct VAT Audit in the place of business of Tvl. Pioneer Leder Tex Private Limited at No.196, SIDCO Industrial Estate, SIPCOT, Ranipet in the reference second cited.
>
> Accordingly the VAT Audit in the place of Tvl. Pioneer Leder Tex Private Limited was conducted by the undersigned along with the Deputy Commercial Tax Officer, CEW I, Vellore and Deputy Commercial Tax Officer, Roving Squad, Vellore for the period from 31.10.2016 to 04.11.2016.
>
> During the course of VAT Audit, the dealers have furnished the required records such as monthly returns, Income Tax Returns, Audit Report in Form "WW", Details of Declaration Forms 'C' and "H",

Purchase and Sales invoices, as requested by the Enforcement wing officials.

The dealers have not produced the Details of Refund received and the Export Refund Claim in Form W and connected records such as purchase orders received, shipping bills, E-BRC etc., for the period from 2010-2011 to till the date of VAT Audit. As a result, the Enforcement Officials could not verify the Refund Claim and Refund received by the Dealer.

On completion of VAT Audit, it is further informed that based on the records produced by the dealer, Certain Defects were noticed which was pointed out to the Dealer by the Enforcement Officials. But Tvl. Pioneer Leder Tex Private Limited have REFUSED TO SIGN the VAT Audit Reports, Audit Paras and Sworn Statements. Hence the VAT AUDIT was concluded as REFUSED TO SIGN.

However, to render Natural Justice, the dealers are given an opportunity of signing by the authorized person, the copies of the above VAT Audit Reports, VAT Audit Paras and Sworn Statement are sent herewith in Duplicate. The dealers may retain a copy with them and shall return one copy of the same to the undesigned within a week's time from the date of receipt of this notice. Failing which VA-3 Proposals will be evolved based on the defects pointed out and as per the provisions of the TNVAT Act 2006, presuming that the dealers have no objection against the above defects."

4. The learned counsel for the petitioner submits that he also filed a reply dated 09.12.2016 and states that the issue is no longer res integra, is now covered by a decision of this Court in W.P.Nos.18071 to 18077 of 2016 dated 03.03.2020. The learned counsel for the petitioner also drew my attention to the decision of this Court dated 11.01.2017 rendered in W.P.Nos.32566 & 32641 to 32645 of 2016 and another decision of the Hon'ble Division Bench of this Court in W.A.No.1757 of 2019 and submits that the impugned notice is liable to be quashed, fresh audit should be conducted.

5. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents.

6. From the content of the notice, it is noticed that orders were issued by the 2nd respondent-Principal Secretary/Commissioner of Commercial Taxes, Chennai on 16.04.2014 bearing Reference No.Q3/11740/13, the Joint

Commissioner (CT) (Enforcement Wing), Vellore has issued authorization to conduct VAT Audit in the place of business of the petitioner. Thus it cannot be stated that the authorization was contrary to Section 64(4) of TNVAT Act, 2006.

7. In this case, the decision to conduct VAT Audit appears to be that of the Principal Secretary/Commissioner of Commercial Taxes, Chennai vide his proceedings on 16.04.2014. The Joint Commissioner (CT) (Enforcement Wing), Vellore has merely identified the officers to conduct the VAT Audit. Therefore, it cannot be said that the VAT Audit conducted by the officers was contrary to law. In any event, the petitioner has also replied to the impugned notice dated 07.11.2016 vide a reply dated 09.12.2016.

8. Therefore, I find no merits in the present writ petition. The respondents are therefore directed to pass appropriate orders pursuant to the reply notice dated 09.12.2016 within a period of 2 months from the date of receipt of a copy of this order. The petitioner is given liberty to file additional representation within a period of 30 days from the date of receipt of a copy of this order. It is needless to state that before passing such order, the respondents shall also follow the Principles of Natural Justice by granting an opportunity of personal hearing to the petitioner.

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

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary,
Government of Tamil Nadu,
Department of Commercial Taxes
and Registration,
Ft.St.George, Chennai - 600 009.

2.The Principal Secretary/Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Joint Commissioner of Commercial Taxes,
Enforcement Wing, Vellore.

+1cc to Mr.A.S.Mujibur Rahman, Advocate SR.814
+1cc to Spl.Govt Pleader(Taxes) SR.1360

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CA(CO)
CB(22/02/2021)



Page numbers