IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2022

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.NO.17119 OF 2022
&
W.M.P.NOS.16427 & 16428 OF 2022

Siti Networks Ltd.,
(formerly Wire and Wireless India Ltd.)
Rep. by its Authorized Representative,
Essel House B 10 Lawrence Road Industrial Area,
New Delhi - 110 035. ... Petitioner

.Vs.

1. The State of Tamil Nadu,
Through its Secretary,
Department of Revenue,
Namakkal Kavignar Maaligai,
Fort St. George,
Chennai - 600 009.

2. The State Tax Officer,
Porur Assessment Circle,
No.4/109, I Floor, Banglore Highway Road,
Varadharajapuram, Nazaratpet,
Chennai - 600 123.

3. The Assistant Commissioner (CT),
Porur Assessment Circle,
No.4/109, I Floor,
Banglore Highway Road,
Varadharajapuram, Nazratpet,
Chennai - 600 123.

4. Appellate Deputy Commissioner of
Commercial Taxes (Legacy II),
Chennai - 600 006,
No.4/109, I Floor,
Banglore Highway Road,
Varadharajapuram, Nazratpet,
Chennai - 600 123. ... Respondents
(4^{th} respondent is deleted vide
order dated 05.07.2022 made in
W.P.No.17119 of 2022)

PRAYER:-

Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the Order TIN:33721388493/2015-16 dated 21.03.2022 (received on 06.04.2022) passed by the Respondent No.2 and quash the same and pass any such and further orders which this Hon'ble Court may deem fit and necessary in the facts and circumstances of the case and render justice.

For Petitioner : Mr.D.P.Singh

For Respondents : Mrs.C.Sangamighirai
Special Government Pleader
For R1

Mr.C.Harsha Raj
Additional Government Pleader
For R2 & R3

ORDER

Mrs.C.Sangamithirai, learned Special Government Pleader for R1 and Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice for R2 & R3 both and are armed with adequate instructions to proceed with the matter finally. Hence, by consent of all learned Counsels, this writ petition is taken up for final disposal even at the stage of admission. R4 is an unnecessary party to the proceedings and ought not to have been arrayed in the writ petition. Hence R4 stands deleted from the cause title.

2. The petitioner was a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 ('Act'). According to it, it had surrendered its certificate of registration, as early as on 06.07.2010.

3. While this is so, the Commercial Taxes Department appears to have obtained information to the effect that the petitioner had engaged in the imports of set-top boxes during the period 2015-16 and on the aforesaid basis issued a notice to the petitioner on 20.03.2020, proposing to bring to tax, turnover of an amount of Rs.18,57,90,420/- along with penalty at 150%.

4. The notice is entirely cryptic and merely proposes to bring to tax the aforesaid turnover without assigning any particulars of how the details of such turnover were culled or came to be available in its possession. A reply has, admittedly, been filed by the petitioner on 29.12.2020, wherein, it refers

to the fact that it has closed its business activity and surrendered certificate of registration in July 2010. The petitioner thus requests that the notice be withdrawn and the proposal for assessment, dropped.

5. Admittedly, there has been no personal hearing in the matter and after the elapse of one and a quarter years, impugned order dated 21.03.2022 has come as a bolt out of the blue, wherein the proposals for assessment of turnover and levy of penalty have been confirmed.

6. There is my considered view, violation of the principles of natural justice on several counts in the present matter. Firstly, there are no particulars made available to the petitioner as to the details on the basis of which, the turnover has been computed or the documents on the basis of which the proposal for assessment has been formulated. It is incumbent upon the petitioner to not just have referred to such details but also to have supplied the same to the petitioner, particularly in light of its categoric assertion that it has surrendered its registration as early as on 06.07.2010. If at all the Department was of the view that the petitioner had continued in business for the period 2015-16, such allegation and the basis upon which it arrived at the same, ought to have been made available to the petitioner as well. This has not been done.

7. That apart, there is inordinate delay between the exchanges of notice and reply, the former in the year 2020, and the passing of the impugned order, in March 2022. There is no justification whatsoever for the interim delay and an order of assessment ought to have been passed in a timely fashion, proximate to the show cause notice and receipt of reply.

8. Thirdly, there has been no personal hearing afforded to the petitioner. No doubt, there is no request by the petitioner, but it is still incumbent upon the respondents to have heard the petitioner prior to passing of the order of assessment.

9. Thus and for the aforesaid reasons, the impugned order is set aside. The Revenue is at liberty to issue a notice to the petitioner enclosing all particulars upon which it relies and formulates its proposal of assessment, and such notice shall be issued by R3 within a period of four (4) weeks from today, seeing as the period of assessment is 2015-16. The petitioner shall be called upon to file a reply within a time bound fashion, heard thereafter and an order of assessment passed either proceeding with the assessment or dropping the proposal. The exercise shall be completed within a period of sixteen (16)

weeks from today. If the petitioner does not respond, the impugned assessment order will automatically stand revived.

10. This writ petition is allowed in the aforesaid terms. Connected writ miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The State of Tamil Nadu,
Through its Secretary,
Department of Revenue,
Namakkal Kavignar Maaligai,
Fort St. George,
Chennai - 600 009.

2. The State Tax Officer,
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3. The Assistant Commissioner (CT),
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Banglore Highway Road,
Varadharajapuram, Nazratpet,
Chennai - 600 123.

+1cc to Mr.Vivek Sarin, Advocate, S.R.No.43065
+1cc to the Government Pleader, S.R.No.43253
+1cc to the Special Government Pleader (Taxes), S.R.No.43403

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GPL(CO)
PBS/29/07/2022