(2014) 12 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 31879 of 2014

Tvl. Fortune Communications — APPELLANT

Vs

The Assistant Commissioner (CT) Nandanam Assessment Circle — RESPONDENT

Date of Decision : 09-12-2014

Acts Referred:
Tamil Nadu Value Added Tax Act, 2006 — Section 22

Citation : (2014) 12 MAD CK 0019

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—With the consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2. The petitioner, being a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition challenging the assessment order dated 17.10.2014 for the assessment year 2012-13. The petitioner has not challenged the assessment order in its entirety, but they are aggrieved only by that portion of the order, wherein the respondent has directed the reversal of ITC wrongly availed on purchase corresponding sales were not disclosed / returns were not filed at other end seller and tax element not paid to the Government to the tune of Rs. 4,52,94,516/-. Therefore, though the prayer sought for in the writ petition is to quash the entire order of assessment, the same is restricted only to examine the correctness of the reversal of ITC on this head alone.

3. The petitioner is a dealer in mobile phones and have declared their total and taxable turnover for the assessment year 2012-13. The returns were deemed to have been assessed under Section 22 of the Act. Thereafter, on scrutiny, the respondent issued a notice proposing to revise the assessment on several grounds and one such ground is with regard to the reversal of ITC on the ground that the sellers neither disclosed the same in their returns nor remitted tax. The

petitioner in their objections pointed out as follows:-

''''ii. In respect of purchases effected from P.C.H. Marketing Pvt. Ltd., for Rs. 29,39,76,136.00 the dealers at the other end have not filed any returns during 2012-13 and no payment were made to the Government. In the absence of such payment the claim of ITC is not in order.

iii. In respect of purchases effected from Tvl.Saves Computers Ltd for Rs. 9,63,90,031.00 for which the dealers have claimed input tax credit Rs. 13884079.00 whereas the sellers have declared their sales only for Rs. 7,70,61,609.00 and paid tax Rs.1,10,85,806.00. Hence the excess claim of ITC Rs. 27,98,274.00 is not in order and liable to be revised.

iv. In respect of purchases effected from Image Marketing for Rs. 129556.00 and ITC claimed Rs. 18,786.00 the dealers at the other end have not filed any returns and not paid any tax to the Government.''''

4. The respondent, while considering this issue, rejected the same on the following terms:-

''''4. Point No. 4 - In respect of point No. 4 credit claim are not supported by consequent reduction of output tax reduction from other end dealers. Hence objections deserves no consideration.''''

5. A perusal of the above finding rendered by the assessing officer clearly reveals total non-application of mind, as the assessing officer has not assigned any reasons as to why the objections do not deserve any consideration. The manner in which the assessing officer has dealt with the issue is not acceptable and it is not in accordance with law. Further, the learned counsel for the petitioner submitted that the decision of this Court in W.P.Nos. 2036 to 2038 of 2013 dated 29.1.2013 (Sri Vinayaka Agencies v. Assistant Commissioner (CT), Vadapalani Assessment Circle) is fully applicable to the case on hand and the legal issue also has not been adverted to by the assessing officer.

6. In the light of the above, the writ petition is partly allowed and the assessment order pertaining to reversal of ITC to the tune of Rs. 4,52,94,516/- is set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to issue notice to the petitioner to appear for personal hearing and after hearing the petitioner and considering their objections, pass a reasoned order on merits and in accordance with law. As regards the other issues raised in the impugned assessment order, it is open to the petitioner to work out their remedy in the manner known to law. In the light of the above order setting aside the reversal of ITC to the tune of Rs. 4,52,94,516/-, the notice of attachment dated 28.11.2014 has to be necessarily set aside and accordingly set aside with liberty to the respondent to issue a fresh notice. Consequently, M.P.Nos. 1 & 2 of 2014 are closed. No costs.