IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33592 of 2015 and
M.P.Nos.1 and 2 of 2015

Thi Raja Steel
Rep. By its Proprietor N.M.Thiyagarajan
No.27/1, Bharathiyar Road,
Thalatheru,
Karaikal ... Petitioner

Vs

1.The Commercial Tax Officer,
Karaikal

2. The Deputy Commercial Tax Officer (IW)
Puducherry ... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the entire records of the 2nd respondent in D1/29/2014/2014-15/CTO-IW dated 05.02.2015 and quash the order passed therein.

For Petitioner : Mr.A.P.Srinivas

For Respondents : Mr.A.Tamilvanan
Government Advocate(Pondy)

O R D E R

Heard Mr.A.P.Srinivas, learned counsel appearing for the petitioner and Mr.A.Tamilvanan, learned Government Advocate (Puducherry) appearing for the respondents. With consent on either side, the Writ Petition itself is taken up for final disposal.

2. The petitioner is a registered dealer on the file of the 1st respondent under the provisions of the Puducherry Value Added Tax Act, 2007 (hereinafter referred to as PVAT Act). The petitioner is engaged in the business of re-sale of steel and cement in Karaikal. The impugned order is a provisional assessment order for the period from April, 2014 to October, 2014 under the provisions of the PVAT Act.

3. Admittedly, as of now, there are sufficient ground to set aside the impugned order which is only a provisional assessment with a direction to the assessing officer to complete the assessment in respect of the sale of Steel for the whole year. However, the impugned order has been challenged on the ground of lack of jurisdiction, as it has been passed by the 2nd respondent, who is an officer of the Intelligence Wing. This contention has been specifically raised in the affidavit filed in support of the Writ Petition, more particularly in ground h in page No.6 of the affidavit.

4. The counter affidavit as well as annexures along with counter affidavit filed by the 2nd respondent do not specifically deal with the said issue and the counter proceeds solely on merits of the inspection and best judgment assessment based on the inspection conducted in the business premises of the petitioner and seeking clarification from the dealers and if necessary, direct to produce all records, etc.,

5.However, assessment should be made only by the jurisdictional assessing officer of the dealer and in the instant case, it is the 1st respondent. Therefore, the impugned order passed by the 2nd respondent is liable to be set aside on the sole ground of lack of jurisdiction, but, that does not mean that the petitioner stand fully exonerated. The Assessing officer, namely, the 1st respondent is directed to complete the assessment for the whole year as the assessment made by the 2nd respondent is only for part of the year and the year is already over.

6.Hence on the above grounds, the Writ Petition is allowed and the Impugned order is quashed and the 1st respondent is directed to commence fresh proceedings for assessment of the petitioner's turnover for the whole of the year by adhering to the provisions of the PVAT Act. Consequently, connected miscellaneous petitions are closed. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssd

To

1.The Commercial Tax Officer,
Karaikal

2. The Deputy Commercial Tax Officer (IW)
Puducherry

+1 cc to Mr.A.P.Srinivas Advocate sr 44026
+1 cc to Government Pleader Puducherry sr 43770

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