IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.34154 of 2015
and
M.P.No.1 of 2015

M/s.Tagyiya International
rep. By its Prop. K.Ateeq Ahmed,
131, Kose Kasim Street,
Muslimpur, Vaniyambadi,
Vellore District. ...Petitioner

vs.

The Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vaniyambadi,
Vellore District. ...Respondent

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari calling for the records of the respondent in his proceedings in TIN 33874642809/08-09 dated 30.09.2015 and quash the same as illegal.

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For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.K.Venkatesh
Government Advocate (T)

O R D E R

Heard Mr.S.Ramanathan, learned counsel for the petitioner and Mr.K.Venkatesh, learned counsel for the respondent. With

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the consent of the learned counsel appearing 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 respondent under the provisions of Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act (CST Act). For the assessment year 2008-09, a notice was issued to the petitioner dated 23.03.2015 stating that purchases were made from an unregistered dealer and hence, the same attracts tax liability under Section 12 of the TNVAT Act.

3.The petitioner filed its objections on 01.04.2015 stating that the purchases from unregistered dealer has been sold as such, by way of trading and sales tax has been paid under TNVAT Act, at the sales point and Section 12 stands attracted only in the circumstances specified in classes 12(1)(a) & 12(1)(d) which excludes trading transactions. Therefore, the petitioner contended that the transactions does not attract Section 12 and the same is not applicable and also requested to drop the proposal.

4.The respondent though has referred to the reply given by the petitioner, has merely confirmed the proposal in the pre-revision notice dated 23.03.2015, stating that the petitioner effected purchases from unregistered Dealer and hence, liable to pay tax under Section 12 of the TNVAT Act.

5.In the written instructions given by the respondent to the learned Special Government Pleader (Taxes) dated 10.12.2015, it has been stated that all the purchases were made from the unregistered Dealers and therefore, it is concluded that the Dealers have purchased raw skins from unregistered Dealers manufactured wet blue/finished leather and therefore, purchase of raw skins are taxable under Section 12 of the TNVAT Act, 2006. However, the stand taken in the written instructions appears to be totally different from what was proposed in the revision notice dated 23.03.2015. Therefore, the respondent has deviated from the proposal made in the notice dated 23.03.2015 and the decision taken in the impugned assessment order and as of now the respondent has putforth a new case.

6.In view of all the above, this Court is of the view that the impugned order is not sustainable and the respondent has to necessarily redo the assessment after due opportunity to the petitioner.

7.In the result, the writ petition is allowed and the impugned order is set aside and the matter is remanded back to the respondent to redo the assessment afresh after affording

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opportunity of personal hearing to the petitioner. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

jbm

To

The Assistant Commissioner (CT),
Vaniyambadi Assessment Circle,
Vaniyambadi,
Vellore District.

1 CC to Mr.S.Ramanathan, Advocate, SR. 51811

1 CC to Spl.Government Pleader, SR 51881

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NR (CO)
PSI 05/10/2016

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