IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.7.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.26272 of 2016 & WMP.No.22526 of 2016

Mrs.Hall Mark Engineers, rep.
by its Partner M.Banerjee ...Petitioner

Vs

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Market Management Committee
Building, Koyambedu, Chennai-107. ...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN No.33461344695/2014-15 dated 8.1.2016 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Mr.S.Kanmani Annamalai, AGP

ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader takes notice for the respondent. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner was a manufacturer and dealer in automobile components. It is stated that they stopped the business activities from 31.8.2012 and from 1.4.2013, they are doing the job work of turning process to the customers of automobile industries. The petitioner is aggrieved by an order of assessment passed by the respondent for the year 2014-15 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act).

3. A notice was issued to the petitioner on 5.11.2015 stating that on verification of the returns data on ceramic tiles for the relevant year received from the Commercial Taxes Department of Gujarat State, it revealed that the petitioner effected inter-state purchase of tiles from a dealer of Gujarat

State and had not reported any Annexure 1A for the relevant year. It was further stated in the said notice dated 5.11.2015 that the petitioner suppressed the purchase from the dealer in Gujarat and as a result, the respondent proposed to assess the petitioner to tax alleging purchase suppression.

4. Though the petitioner received the said notice dated 5.11.2015, they did not submit any reply. Therefore, left with no other option, the respondent confirmed the proposal in the notice dated 5.11.2015. After having suffered an order of assessment, now the petitioner has rushed to this Court raising various legal and factual contentions. The petitioner, having failed to utilize the opportunity granted, cannot plead that there has been a violation of the principles of natural justice, as it is a case where the petitioner failed to avail the opportunity. Therefore, no error can be attributed to the manner, in which, the assessment was finalized.

5. However, the learned counsel for the petitioner submits that there has been some difficulty in obtaining records and documents from the dealer in Gujarat and in fact, the Assessing Authority had been granting time to the petitioner. It is stated that though the impugned order is dated 8.1.2016, it was served on the petitioner only on 24.6.2016. The learned counsel for the petitioner has further stated that all the documents are available with them and in fact, copies of documents have been filed in the typed set of papers as document Nos.1 to 11 and they are Annexure 1A numbering four for the months of May, June, July and September, 2014, six Form C declarations and a statement of sales made by the Gujarat dealer.

6. In the light of the above facts, without setting aside the impugned order of assessment, the writ petition is disposed of with a direction to the petitioner to file an application under Section 84 of the TNVAT Act along with the documents, which are in possession of the petitioner, within two weeks from the date of receipt of a copy of this order. If such documents are filed, the respondent, without ignoring the same, shall take into consideration those documents, verify their authenticity and relevancy and thereafter, if found satisfied, the respondent shall redo the assessment in accordance with law. No costs. Consequently, the above WMP is closed.

7. It is the further case of the petitioner that they have not effected any purchase and that it is one M/s.Rajan Tiles and Marbles, Chennai alone, which has effected purchase and reported.

8. This issue also can be raised in the application under Section 84 of the TNVAT Act, in terms of the above direction.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Koyambedu Assessment Circle, Market Management Committee Building,
Koyambedu,
Chennai-107.

+1cc to Mr.S.Ramanathan, Advocate Sr.42657
+1cc to the Special Government Pleader sR.43244

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srg 17/08/2016