IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 07.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31155 of 2016 &
W.M.P.Nos.26997 & 26998 of 2016

M/s.M.G.M.Traders,
Rep.by its Prop. Mr.M.Radhakrishnan,
No.187, Kalaivani Nagar,
Mohanur Road,
Namakkal-673 001. .. Petitioner

Versus

The Commercial Tax Officer,
Namakkal Town Assessment Circle,
Salem. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN:33363123342/2010-11, dated 13.02.2015 and quash the same and further direct the respondent to re-do the assessment after affording an adequate opportunity including personal hearing.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, accepting notice on behalf of respondent. With the consent of the learned counsel on either side, the Writ Petition itself is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent engaging in renting out lorries / vehicles to third parties. The petitioner secured a contract for supply of fly ash to a Company who had secured a contract for laying road in Trichy, Coimbatore, Madurai and Tuticorin. Therefore, the petitioner obtained a registration under the provisions of

Tamil Nadu Value Added Tax Act, 2006, on the file of the respondent and apart from providing transportation of fly ash, they also effected sales. The respondent issued a notice dated 28.01.2015 based upon information secured from the official website. The dealers' profile details were furnished as annexure to the notice dated 28.01.2015, out of the transactions, the petitioner did not dispute the transactions in Serial No. 1 to 29, but disputed the transactions 30 to 33, stating that they have not effected any transaction with those companies and accordingly submitted objections and also filed the documents pertaining to their sale report. However, the respondent partially accepted the explanation with regard to the transaction charges, but so far as the transaction with those four companies, the respondent stated that as per the official website of the Department, these transactions are reflected as transactions of sale effected by the petitioner and therefore, confirmed the proposal.

3. Though the petitioner paid 25% of the disputed tax and filed the Appeal (the Appeal having been been filed belatedly and the same has been rejected as not maintainable), the order passed by the Appellate Authority rejecting the Appeal as not maintainable is correct. However, in this Writ Petition since the petitioner has challenged the order of Assessment, this Court is inclined to go into the correctness of the said order.

4. When the petitioner has stated that he has not effected transactions with those four companies, the respondent, being the Assessing Officer of the petitioner, could have made an endevour to ascertain from the Assessing Officer of those four companies, further details, so as to confront the petitioner and afford him opportunity to rebut the same. However, after recording the objection given by the petitioner, the respondent has merely gone by the web report which was the basis for the revision notice. Thus, an enquiry is required to be done by the respondent before confirming the proposal, which has not been done in the instant case. That apart, the documents / details furnished by the petitioner along with their objections, dated 11.02.2015 have not been discussed in the impugned order. Therefore, this Court is of the view that the impugned proceedings are in violation of principles of natural justice.

5. Thus, taking into consideration the peculiar circumstances of the case, and also taking note of the fact that the petitioner had already paid 25% of the disputed tax, this Court is inclined to remit the matter to the respondent for fresh consideration.

6. In the light of the above, the petitioner is directed to treat the impugned proceedings (assessment order) as a

show-cause notice and file further objections within a period of 15 days from the date of receipt of a copy of this order and the objections should also contain additional particulars which the petitioner sought from the other-end-dealers and place it for consideration of the respondent. On receipt of the objections, the respondent shall cause an enquiry into the matter, afford an opportunity of personal hearing to the petitioner and re-do the Assessment in accordance with law. The payment of 25% of the tax shall be adjusted as against the fresh Assessment Orders to be passed in terms of the above direction.

7. With the above observations, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

r n s

To
The Commercial Tax Officer,
Namakkal Town Assessment Circle,
Salem.

1 cc to Mr.V.Sundareswaran, Advocate, sr.50663
1 cc to Special Government Pleader, (Taxes), sr.50843

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kra 22.09.2016