IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No. 32142 of 2016 &
WMP.No.27888 of 2016

M/s. Triggo Tech Engineering,
Rep. by Mr. M. Nithya Nathan,
Partner,
13, Deiva Nagar, 2nd Street,
Tambaram West, Chennai-45. .. Petitioner

Versus

The Commercial Tax Officer,
Tambaram assessment circle,
Chennai - 45. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari or any other appropriate writ, order or direction, called for the records on the files of the respondent in TIN : 33670889989/2013-14 dated 29.05.2015, and quash the same as being contrary on the principles of natural justice and hence invalid and illegal.

For Petitioner : Mr. V. Srikanth

For Respondent : Mr.K. Venkatesh, GA (T)

ORDER

Heard Mr. V.Srikanth, learned counsel for the petitioner and Mr. K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent and with the consent on the either side, the writ petition is taken up for final disposal.

2. The petitioner are electrical contractors providing specialized services to industries, educational institutions, commercial and manufacturing sectors and the registered dealers

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on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). In this writ petition, the petitioner has challenged the order of assessment under the TNVAT Act for the year 2013-14 dated 29.05.2015.

3. Two grounds have been raised by the petitioner. Firstly, the impugned order has been passed without affording an opportunity of personal hearing, which is mandatory, as the respondent proposes to revise the turnover by invoking the power under section 22[4] of the Act.

4. The second contention raised by the petitioner is that the finding rendered in the impugned order is quite different from the proposal made in the show cause notice. In this regard, the learned counsel for the petitioner invited the attention of the Court to the allegation in the show cause notice dated 30.04.2015, wherein it was stated that there is a difference in turnover reported and the exemption claimed and the exemption claimed as per Audited statement is proposed to be assessed to tax at 14.5% in the absence of details.

5. The petitioner would contend that while submitting the reply, certain documents were not made available. Therefore, the learned counsel for the petitioner would submit that if the Assessing Officer had merely stated that on account of non production of the documents, the petitioner is liable to be assessed to tax at 14.5%, it would have been a different matter. But, however, while considering the said issue, respondent has stated that the dealers though had accepted the correct exempted turnover and furnished details, they stated that they will produce documents in spite of their claim to have not availed the claim and thereafter, proceeded to refer to the transactions with the other dealers, namely Classic Linens, Zen Linens, and East Wind Footwear Company limited etc., and completed the assessment.

6. The learned counsel for the petitioner further submitted that after receipt of the impugned assessment order, the petitioner filed a petition dated 16.09.2015 for furnishing the details and requesting the respondent to re-do the assessment. This was followed by another letter dated 15.07.2015, furnish further details and stating that those transactions are exempted from payment of tax. Copies of the notification issued by the MEPZ Special Economical Zone dated 12.06.2008 was also appended to the said letter apart from the certificates given by the said companies, namely Classic Linens, Zen Linens and East Wind Footwear Company limited etc., were also enclosed.

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7. That apart, the petitioner is stated to have filed service tax returns for the financial year 2014-15. This record has been placed before the respondent to show that the service income which is included in the impugned Assessment Order has been shown in the service tax assessment for the subsequent year. The above documents and details furnished by the petitioner, admittedly have been placed only after that the assessment has been completed. Therefore, the Assessing Officer cannot be expected to take note of those documents. However, the petitioner should not be left without any remedy. In terms of section 84 of the TNVAT Act, the dealer is entitled to seek for rectification of the assessment for good and valid reasons. Considering the submissions made by the learned counsel for the petitioner, this Court deems it appropriate to grant an opportunity to the petitioner to file a petition under Section 84 of the TNVAT Act.

8. Accordingly, while directing the impugned Assessment Order to be kept in abeyance, the petitioner is directed to file a petition under Section 84 of the TNVAT Act within a period of two weeks from the date of receipt of the copy of the order, enclosing all the relevant documents and if the same is filed, the respondent shall afford an opportunity of personal hearing to the petitioner and consider the same on merits and in accordance with law within a period of three weeks thereafter.

9.The writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

The Commercial Tax Officer,
Tambaram assessment circle,
Chennai - 45.

+1cc to the Special Government Pleader sr.52372
+1cc to Mr.C.Venkatraman, Advocate Sr.52121

msm[co]
srg 26/09/2016

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