IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM:

THE HON 'BLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.36864 of 2016

and W.M.P.No.31686 of 2016

Erum Exports,
No.4, Narasimhan Street,
Nagalkeni, Chrompet, Chennai – 600 044,
Rep. By its Proprietrix ... Petitioner

Versus

The Assistant Commissioner (CT),
Pallavaram Assessment Circle,
Nos.32 & 33, 2nd Street, Sripuram,
Chrompet, Chennai – 600 028 .. Respondent

Prayer:- Writ Petition 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.33180888270/2015-16 and quash the order, dated 23.06.2016, as the same is not sustainable in law, with a direction to the respondent to pass final assessment order, after affording an opportunity of personal hearing to the petitioner.

For Petitioner : Mr. MD. Ghafoor Ur Rahman

For Respondent : Mr. K.Venkatesh,
Govt. Advocate (Taxes)

O R D E R

Heard Mr.MD.Ghafoor Ur Rahman, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Taxes), appearing for the respondent. By consent of the learned counsel for both sides, the writ petition itself is taken up for final disposal.

2. The petitioner is a Trader in raw Hides and Skins and registered as a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. The impugned order, in this writ petition, is an order of Revision of Assessment, under the provisions of the said TNVAT Act. The petitioner had filed their

returns for the year 2015-16. On verification of the returns with the Intranet Website, the respondent found that the petitioner has effected purchase from the Registration cancelled dealers and availed Input Tax Credit and therefore, a notice was issued to the petitioner, on 31.12.2015, calling upon the petitioner to pay the tax amount along with the interest. The details of the transactions done by the petitioner with the said registration cancelled dealers were mentioned in the notice, dated 31.12.2015. The petitioner's case is that their Accountant met the respondent and explained the transactions, but there is no such proof produced before this Court to substantiate the stand, therefore, the said contention is rejected.

3. The Assessing Officer did not immediately finalize the assessment, but gave one more opportunity, by issuing another notice, dated 08.01.2016, by referring to the earlier notice, dated 31.12.2015 and also pointing out that certain other defects have been found, on further verification of the Intranet Website. The petitioner did not submit their objections to the said notice. Subsequently, in order to afford an opportunity to the petitioner, the respondent issued the third revised pre-assessment notice, dated 07.03.2016. Even for this notice, the petitioner did not file their objections.

4. The contention now raised by the petitioner stating that their Accountant met the respondent and sought for details etc., remain unsubstantiated. Thus, it is clear that the petitioner failed to avail the opportunities granted by the respondent on three occasions from December 2015.

5. Having failed to avail the opportunities granted, now the petitioner cannot complain that there is violation of principles of natural justice. On account of the lethargic attitude of the petitioner, the respondent was left with no other option, except to finalize the assessment, as done in the impugned order. Therefore, the impugned order cannot be faulted with.

6. The learned counsel for the petitioner would submit that the impugned assessment is a provisional assessment and since the year is already over, the assessment can be directed to be done for the entire year, by considering the petitioner's returns. In this regard, the learned counsel placed reliance on a decision of the Hon'ble First Bench of this Court in the case of **M/s. Jothi Melters (India) Pvt. Ltd., v. The Commercial Tax Officer, Sathiyamangalam, in W.A.Nos.1412 and 1413 of 2009, dated 14.10.2009,** which was followed, by this Court, in the case of **Next Education India Pvt. Ltd., v. The Commercial Tax Officer, Chennai, in W.P.No.16857 of 2015, dated 06.06.2016.**

7. In the considered view of this Court, the question of applying the said decision to the facts of the case on hand would arise only if the petitioner had been diligent enough, in prosecuting the matter. Having failed to avail the three opportunities granted, now the petitioner cannot contend that the

impugned order has to be set-aside and the assessment should be re-done for the entire year. However, with a view to afford an opportunity to the petitioner, this Court is inclined to give one more opportunity to the petitioner to go before the Assessing Officer, subject to certain conditions.

8. Accordingly, the writ petition stands disposed of, by directing the petitioner to pay 15% of the disputed tax before the respondent, within a period of three weeks from the date of receipt of a copy of this order. If the same is done, then the petitioner is entitled to treat the impugned assessment order, as the show cause notice and submit their objections, within a period of seven days therefrom. On receipt of the objections, the respondents shall consider the same and re-do the assessment for the entire year, in accordance with law, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply with the conditions imposed in this order within the time stipulated, the benefit of this order will not enure the petitioner and the writ petition shall stand automatically dismissed, leaving it open to the petitioner to avail the remedies available to them under the Act. In the event, if the petitioner complies with the condition, then the respondent shall not initiate any coercive action for the recovery of the balance amount of tax and penalty and shall re-do the assessment, as per the above direction. No costs. Consequently, the connected WMP is closed.

srk

Sd/-
Assistant Registrar (CS-)

/TRUE COPY/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT),
Pallavaram Assessment Circle,
Nos.32 & 33, 2nd Street, Sripuram,
Chrompet, Chennai - 600 028

+1 CC Mr. MD. Ghafoor Ur Rahman Advocate SR.No.60020

+1 CC The Special Government Pleader (Taxes) SR.No.60102

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GJII
MSI 08/11/2016