IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

CORAM:

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

Writ Petition No.36981 of 2016
and W.M.P.No.31781 of 2016

M/s. Sri Vaishnavi Auto,
Rep. By its Manager,
No.485, Thindivanam Road,
Vandavasi,
Thiruvannamalai District ... Petitioner

Versus

The Commercial Tax Officer,
Vandavasi Assessment Circle,
Vandavasi, Thiruvannamalai District .. Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a Writ of Certiorarified Mandamus to call for the records of the respondent, quash the assessment proceedings in TIN No.33584603344/2015-16, dated 19.09.2016, and to direct the respondent to pass fresh orders, without relying on the details in the Sales Tax Department Website, but verifying the books of accounts of the petitioner, after providing an opportunity of personal hearing.

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

O R D E R

Heard Mr.C.Bakthasiromoni, 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 partnership firm and an authorized service station for two-wheeler company, by name, M/s. Susee Scooter Centre, Kancheepuram and they are doing service work for

the two-wheelers, at Chetpet Road, Vandavasi, Thiruvannamalai District. It is stated that the annual turnover of the petitioner is less than Rs.10 lakhs and they are the registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, on the file of the respondent.

3. While so, the respondent issued a notice, dated 30.08.2016, proposing to levy sales tax on the alleged ground that the petitioner has purchased two-wheelers. The respondent had included the sales of two-wheelers effected by the main dealers, M/s.Ganesh Bikes and M/s. Susee Scooter Centre, Vandavasi, as the sales effected to the petitioner and arrived at the taxable turnover. The petitioner is said to have met the Assessing Officer in person stating that the petitioner is only an authorized Service Station to the main selling agent, by name, M/s.Susee Scooter Centre, Kancheepuram, (who can sell the vehicle) and the petitioner cannot sell the vehicle and they are only a Service Station. However, the respondent completed the assessment solely based upon the details, which have been mentioned in the Intranet website of the Department. Thus, resulting in the impugned order of assessment demanding tax as well as levying penalty.

4. It may be true that the petitioner did not give its written objections, but it is their case that they had met the authority in person and appraised them the factual position. Further more, the Assessing Officer should have considered, as to whether the petitioner is entitled to act as a dealer to the two-wheelers, as sales could be effected on two-wheelers only by authorized dealers and the petitioner, being only a service station, obviously, cannot effect transactions claiming themselves to be the authorized dealer. However, the present impugned order is a result of the mistake committed by M/s. Ganesh Bikes, Vellore, the authorized dealer of the Hero Honda Motor Cycle and only after the impugned order was passed on 19.09.2016, they have given a letter to the respondent, stating that they had wrongly included the petitioner's TIN Number in 48 invoices, which were originally sold to customers and they confirmed that those vehicles were only sold to the customers and the TIN Number of the petitioner has been wrongly included in the said invoices. Further, another letter, dated 29.09.2016, has been given to the respondent by M/s.Ganesh Bikes, confirming that the petitioner is only a Commission Agent and they are paid Rs.750/- as commission, per vehicle for the sale of the vehicle.

5. Since these communications have been given to the Assessee only after passing of the impugned order, obviously the same could not have been taken into consideration by the Assessing Officer. However, this Court is of the opinion that,

one more opportunity can be granted to the petitioner to produce all the records so that the assessment can be done in a proper manner.

6. Accordingly, the writ petition is allowed, the impugned order is quashed and the matter is remanded back to the respondent, for fresh consideration, who shall take note of the letters given by M/s. Ganesh Bikes, (both) dated 29.09.2016 and also afford an opportunity of personal hearing to the petitioner to give their objections and re-do the assessment in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

The Commercial Tax Officer,
Vandavasi Assessment Circle,
Vandavasi, Thiruvannamalai District

+1cc to Special Government Pleader Sr.60103

W.P.No.36981 of 2016
and W.M.P.No.31781 of 2016

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srg 25/10/2016