IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 28.11.2016
CORAM
THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
W.P.No.38255 of 2016 &
W.M.P.No.32802 of 2016

M/s.Tulsi Electricals,
Represented by its Proprietor,
55-C, Taluk Office Road,
Hosur. .. Petitioner

Versus

The Commercial Tax Officer,
Hosur South,
Hosur. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in order dated 14.09.2016 in TIN.33583361259/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondents. This Court carefully perused the materials on record as well as the written instructions given by the respondent in the form of a draft counter affidavit.

2. The petitioner has challenged the order of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act") for the year 2015-16.

3. At the time when the Writ Petition was entertained on 03.11.2016, the following order was passed:-

> "Heard Mr.Adithya Reddy, learned counsel for the petitioner.
>
> 2. It is submitted that though the Assessing Officer is convinced with the objection given by the petitioner dated 28.12.2015 to the pre-revision notice, the Assessing Officer appears to have been bound over by the direction issued by the Joint

> Commissioner (CT) (Enforcement), Salem and has confirmed the proposal. It is also submitted that this is a case where the Assessing Officer has abdicated his statutory duty.
>
> 3. In the light of the above submissions, the petitioner has made out a prima facie case for the grant of interim order.
>
> 4. Accordingly, there will be an order of interim stay. Mr.K.Venkatesh, learned Government Advocate accepts notice for the respondent and seeks time to get instructions. List on 28.11.2016."

On a perusal of the impugned order, it is seen that the respondent has not taken into consideration the submission made by the petitioner. In the impugned order, the respondent refers to a deviation report of his Superior Officer viz., the Join Commissioner, Commercial Taxes, Salem, dated 29.02.2016 and in the penultimate paragraph, the respondent states that the deviation report has been rejected. However, the petitioner had no notice of such rejection, though the petitioner was made known about the deviation report, dated 29.02.2016, which has also been specifically referred to in the impugned proceedings.

4. There are two way of looking at the issue. If deviation report has been submitted by the authority and he has convinced that there is no case for the revision of total taxable turnover, it is well open to the assessing officer to take such a stand. The other approach is, if the deviation report submitted by the officer is not acceptable to the assessing officer, then, if he proceeds to make an assessment, it should be with due application of mind fully considering the objections of the dealer and without in any manner being influenced by any observations made in the report of the inspecting officers. However, the impugned order does not follow any of the above two approaches, but has rather confused the whole issue, since substantial portion of the deviation report has been extracted and there is mention that the Joint Commissioner has rejected the deviation report. If that is the case, then, the respondent should have considered the details submitted by the petitioner and mere non submission of the stock details to the Enforcement Officer, cannot be the sole reason to disbelieve the stand of the dealer. Thus, for all the above reasons, the assessment has to be redone by the assessing officer independently without being in any manner influenced by the report of the enforcement wing.

5. Accordingly, the Writ Petition is allowed and the impugned order is set-aside and the respondent is directed to redo the assessment after affording an opportunity of personal hearing in terms of the above direction. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To
The Commercial Tax Officer,
Hosur South,
Hosur.

+1 cc to Mr.Adithya Reddy Advocate sr 69470
+1 cc to Special Government Pleader Taxes sr 69605

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