IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.11.2016

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.No.38448/2016 & WMP.No.32917/2016

M/s.India Agencies [Regd]
rep.by its Partner Pavan Kapoor
446, Bagyalakshmi Shopping Compled
Tirupur. .. Petitioner

Vs

The Assistant Commissioner
[CT], Tirupur North Assessment
Circle, Tirupur. .. Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records of the respondent in his proceedings in TNGST No.2303527/2000-01, quash the assessment order dated 31.08.2016 made therein.

For Petitioner : Mr.P.V.Sudhakar

For Respondent : Mr.K.Venkatesh, GA

ORDER

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

2 The petitioner, in this writ petition, is a registered dealer on the file of the respondent under the provisions of the erstwhile Tamil Nadu General Sales Tax Act [TNGST Act] and presently, under the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act] and is aggrieved by the order passed by the respondent dated 31.08.2016, rejecting the petitioner's application for rectification filed u/s.55, after a period of eight years.

3 The case of the petitioner is that already the product dealt with by them, viz., Sewing Machine, has been assessed to tax at higher rate of 8%. This factual averment has to be

adjudicated by the authority. However, it appears that the respondent has passed the order after a period of eight years without affording an opportunity of personal hearing to the petitioner, though the statute does not specifically state that personal hearing should be afforded. But, when the matter is pending for eight years, nothing prevents the respondent from issuing a notice to the petitioner / dealer calling upon him to appear in person. If that had been done, the respondent would have been in a position to clearly assess the factual situation, especially, when the petitioner's stand is that they have paid the tax at higher rate of 8%.

4 In the light of the above, the writ petition is allowed and the impugned order of the respondent dated 31.08.2016 is set aside and the matter is remanded back to the petitioner for fresh consideration. The respondent is directed to issue notice to the petitioner, afford an opportunity of personal hearing and re-consider the petition filed u/s.55 of the Act and pass orders on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

AP

Sd/-
Assistant Registrar (CS III)

/TRUE COPY/

Sub-Assistant Registrar

To
The Assistant Commissioner
[CT], Tirupur North Assessment
Circle, Tirupur.

+1CC to Spl. Govt. Pleader SR.NO.66687

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RSY[CO]
MK:09/12/2016