IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.39255 of 2016 and

W.M.P.No.33613 of 2016

1 M/s.D.Geetha Enterprises
Rep by its Proprietor No.C/1 Munuswamy
Street Athipet Chennai-600 058 ... Petitioner

Vs

1 The Assistant Commissioner(CT)
Nolambur Assessment Circle Station 176-B M.
T.H.Road Villivakkam Chennai-600 049 ... Respondent

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of Certiorari To call for the records of the respondent in impugned order in TIN : 33371351292/2014-15 dt. 04.10.2016 and quash the same as contrary to the provisions of TNVAT Act and against the principle of natural justice not considering the documents reply and also by not providing the opportunity of personal hearing.

For Petitioner : Mrs.C.Rekha Kumari

For Respondent :Mr.K.Venkatesh, Government Advocate

ORDER

Heard Mrs.Rekha Kumari, the learned counsel for the petitioner and Mr.K.Venkatesh, the learned Government Advocate, who accepts notice on behalf of the respondent and with the consent of either side, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the 'TNVAT Act' in short), has challenged the impugned assessment order for the

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year 2014-15 . As against the impugned order, the petitioner has an effective alternative remedy of filing an appeal before the Appellate Authority. However, the petitioner has filed this writ petition.

3. The learned counsel for the petitioner submitted that since there is an error which is apparent on the face of the order and the impugned order was passed without giving any opportunity to the petitioner and by wrongly referring to the petitioner's balance-sheet for the financial year 2013-14, the respondent has completed the assessment.

4. On a perusal of the impugned order, it is seen that five issues were pointed out in the revised notice, dated 28.7.2016. The petitioner has given their explanation and it prima facie appears that the respondent was satisfied with the explanation. But however, by referring to the audited balance-sheet, the respondent observed that the petitioner has declared a total turnover of Rs.18,01,96,075.00 and earned gross profit at 4.10%. Therefore, the respondent overruled the petitioner's objections.

5. On a perusal of the audited balance-sheet, it is seen that the said turnover was for the financial year 2013-14. Thus, it appears that there is an error, which has crept in while passing the impugned assessment year. Had the respondent afforded an opportunity of personal hearing to the petitioner, this error could have been avoided. Therefore, this Court is of the view that instead of keeping the matter pending, the matter could be sent back to the assessing officer to re-do the assessment. For that reason, the petitioner is directed to treat the impugned proceedings as a show cause notice and submit further objections within a period of two weeks from the date of receipt of a copy of this order. On such objection being submitted, the respondent shall afford an opportunity of personal hearing to the petitioner and re-do the assessment and pass a speaking order on merits and in accordance with law within a period of two weeks from the date on which the personal hearing is concluded. Till then no coercive action shall be initiated against the petitioner to recover the tax and penalty as quantified in the impugned assessment.

6. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

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To

1 The Assistant Commissioner(CT)
Nolambur Assessment Circle Station 176-B M.
T.H.Road Villivakkam Chennai-600 049

+1 cc to M/s.C.Rekha Kumari Advocate sr 65144

W.P.No.39255 of 2016

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