IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.40367 of 2016 &
WMP No.34436 of 2016

Vesta Builders and Promoters
rep. by its Partner [PETITIONER]

Vs

Asst.Commissioner (CT)
O/o Asst. Commissioner of Commercial Taxes
Vellacherry Assessment Circle
No.48, Greenways Road
R.A.Puram, Chennai 600 028. [RESPONDENT]

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings leading to passing of the Assessment Order vide TIN/33320989558/2013-14 dated 07.07.2016, quash the same and direct the respondent to pass fresh revised assessment order after considering the reply filed and providing an opportunity of personal hearing.

For Petitioner : Mr.S.Sathiyanarayanan

For Respondent : Mr.K.Venkatesh
Government Advocate

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O R D E R

Heard Mr.S.Sathiyanarayanan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice for the respondent. By consent, the Writ Petition itself is taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act], and the challenge in this Writ Petition is to an order of assessment under the TNVAT Act, for the year 2013-14, only on the ground that the order has been passed without taking into consideration the objections given to the pre-revision notice, which was received by the Office of the respondent on 26.2.2015.

3.The pre-revision notice is dated 21.01.2015, for which the petitioner submitted their objections dated 20.02.2015 and along with the reply, they enclosed the following documents:

a) Copies of the returns filed by the petitioner under the Finance Act, 1994, for the H.Y.E. 30.09.2013 and H.Y.E. 31.03.2014 (2 Nos.)

b) Copy of Notification No.24/2012 - Service Tax issued by the Govt. of India.

c) Copy of the petitioner's Audit Report in Form WW under the TNVAT Act, 2006 for the year 2013-14.

d) Statements showing month wise purchase and sales turnovers reported by the petitioner in the returns filed by the petitioner under the TNVAT Act, 2006 for the year 2013-14 (2 Nos.).

4.As pointed out earlier, the petitioner has handed over the explanation to the respondent and the respondent has received the same and affixed the signature on 26.2.2015. The said fact was established by the petitioner by producing the 'Letter Delivery Book'.

5.This Court has time and again pointed out that it is high time that the Commercial Taxes Department shall dispense with the procedure of giving acknowledgment in 'Letter Delivery Book' as there is always room for complaints and grievances. It is not known as to why the Commercial Taxes Department, which is insisting upon filing 'E-Returns' by the dealers, is adopting a procedure of giving acknowledgment in 'Letter Delivery Book', which is an archaic and an old practice and it is high time, the Department shall abandon the same and give proper electronically generated acknowledgment.

6.The petitioner was issued with notice dated 18.5.2016 and in the affidavit filed in support of the Writ Petition, in paragraph No.8, it is submitted that the petitioner's representatives appeared before the respondent and represented that they have submitted their reply to the earlier notices and the respondent stated that he would revert after reviewing the entire set of documents. However, the respondent passed the impugned order on the ground that the petitioner has not submitted any objections.

7.In the light of the above, this Court is inclined to believe the stand taken by the petitioner that the reply dated 20.02.2015 was received by the respondent on 26.2.2015 in terms of the endorsement made in the 'Letter Delivery Book' and therefore holds that the impugned order is in violation of principles of natural justice. Therefore, the impugned order has to be held to be illegal.

8.Accordingly, the petitioner is directed to treat the impugned proceedings as a show cause notice and submit further objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. Since, this Court has directed the impugned order to be treated as a show cause notice, the question of recovering the tax and penalty as quantified in the impugned order does not arise and it shall abide by the fresh orders to be passed in terms of the above directions.

The Writ Petition is disposed of on the above terms. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

Asst.Commissioner (CT)
O/o Asst. Commissioner of Commercial Taxes
Vellacherry Assessment Circle
No.48, Greenways Road
R.A.Puram, Chennai 600 028.

+1 cc to Spl.G.P.sr,66689

+1 cc to Mr.S.Sathyanarayanan,advocate,sr.66512.

ksj(co)
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