IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.04.2017

CORAM

THE HON'BLE Mr. JUSTICE K.RAVICHANDRABAABU

W.P.No.9280 of 2017
and
W.M.P.Nos.10255 and 10256 of 2017

M/s. Sri Devi Vilas Kalvettu,
Rep. By its Proprietor - D. Gnanasekaran,
No.11, Cutchery Road,
Mayiladuthurai - 609 001,
Nagapattinam District. ... Petitioner

Vs.

The Deputy Commercial Tax Officer (FAC),
Mayiladuthurai,
Nagapattinam. ... Respondent

This writ petition is filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records on the file of the respondent in its impugned proceedings made in TIN.33644042457/2012-2013 dated 17.11.2015 quash the same.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Mr. K. Venkatesh, learned Government Advocate takes notice for the respondent. By consent, the main writ petition is taken up for final disposal.

2. The Petitioner is aggrieved against the order of assessment dated 17.11.2015 passed in respect of the assessment year 2012-13. The main contention of the writ petitioner is that the order of assessment passed by relying on the web report is not sustainable, as there was no notice of proposal to that effect, when the respondent has chosen to issue such notice on 15.04.2015. In other words, the contention of the petitioner is that the assessment order was made without there being any proposal based on the materials collected through Web Report. The further contention of the petitioner is that in respect of allegation made in the notice that the petitioner has willfully shown the sales below the threshold limit, the objections

raised by the petitioner on that aspect, has been simply overruled without their being any discussion or findings on those objections.

2. Heard both sides.

3. There is no dispute to the fact that before passing order of assessment, the respondent issued the notice of proposal on 15.04.2015, wherein the only allegation made against the petitioner was that they have shown their sales below the threshold limit to avoid the payment of legitimate tax. There is absolutely no reference whatsoever with regard to the materials collected by the Assessing Officer from the other end dealers, based on web report. Only when the order of assessment is passed, the Assessing Officer has referred to the said aspect of scrutiny of the other end dealer Annexure-II generated from computer in the Commercial Taxes Department website. Therefore, as rightly pointed out by the petitioner, the assessment order passed based on web report was not preceded with any such proposal, while issuing the notice on 15.04.2015. Insofar as the issue with regard to the allegation of showing sales below the threshold limit is concerned, the Assessing Officer, though extracted the objections raised by the petitioner, has not given any findings or reasoning to overrule such objections except to state that their objections are overruled.

4. Therefore, I find that the matter needs to be reconsidered by the Assessing Officer afresh. Accordingly, the Writ Petition is allowed and the impugned order of assessment is set aside. The matter is remitted back to the Assessing Officer for redoing the assessment, after giving an opportunity of personal hearing to the petitioner. Such exercise shall be done by the respondent within the period of four weeks from the date of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsi
To

The Deputy Commercial Tax Officer (FAC),
Mayiladuthurai,
Nagapattinam.

+1cc to Mr.R. Hemalatha, Advocate, S.R.No.23163
+1cc to the Spl.Government Pleader (Taxes), S.R.No.23387

SVI(CO)
md(21/04/2017)

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