IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.9284 of 2017
&
W.M.P.No.10259 of 2017

Tvl.Micro Tech CNC Pvt.,Ltd.,
Rep. by its Authorised Representative,
S.Jayabalakrishnan, No.16-E,
Sipcot Phase-2, Hosur - 635 109. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Hosur (North) Assessment Circle,
Hosur. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records on the files of the respondent in CST.448300/2011-12 dated 06.03.2017 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Central Sales Tax Act, 1956 (CST Act), is aggrieved by the order, dated

06.03.2017, which is a revisional order revising the assessment for the year 2011-12 under the CST Act. The petitioner was issued a notice, dated 05.03.2015, by the respondent directing the petitioner to show cause as to why the order should not be passed to reverse the ITC availed on interstate sales to SEZ units on a turn over of Rs.6,90,10,305/- and why the ITC reversal under Section 19(5)(a) of the TNVAT Act proposed for a sum of Rs.12,48,088/- should not be implemented. The petitioner submitted his objections dated 24.03.2015 which was handed over to the office of the respondent on 06.04.2015. In spite of the receipt of the objections, once again another notice was issued on 04.05.2015 on identical lines as that of 05.03.2015. The petitioner sent a reply informing the respondent about that earlier reply given along with the copies of invoices. Nothing happened nearly for two years, suddenly by the impugned order, the respondent has completed the assessment.

3.On a perusal of the impugned assessment order, it is seen that there is no reference to the petitioner's reply, dated 24.03.2015, though the body of the assessment order, the respondent has vaguely stated that the petitioner has replied some details. However, what has prompted the respondent to pass the impugned assessment order is an Audit General Office notice, dated 23.11.2016, the contents of which the petitioner was not informed. Thus, there has been serious violation of principles of natural justice and totally non-application of mind on the part of the respondent before finalizing the assessment. Thus, the impugned order calls for interference.

4.In the light of the above, the the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration who shall consider the petitioner's objections, afford an opportunity of personal hearing and re-do the assessment. Needless to say that the Assessing Officer being a statutory authority has to function independently uninfluenced by any report or direction issued by the superior officers. The consideration should be based on the objection which the petitioner has given to the notice proposing the reversal of ITC. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

The Assistant Commissioner (CT),
Hosur (North) Assessment Circle,
Hosur.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.49018
+1cc to the Government Pleader, S.R.No.49436

W.P.No.9284 of 2017

AR CCC
CA(01/08/2017)