IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P No.8450 of 2017
and
W.M.P.Nos.9248 & 9249 of 2017

M/s.Green Labs India
rep.by its Partner Mr.B.Jayanth
No.AP 961, 11th Sector, 66th Street
KK Nagar Chennai - 600 078. ... Petitioner

Vs

The Commercial Tax Officer
KK Nagar Assessment Circle
No.16/55 Dr. Govindan Road
West Mambalam, Chennai- 600 033. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records relating to the order TIN 33141424799/2012-13 dated:31.03.2015 passed by the respondent quash the same and consequently direct the respondent to pass a fresh assessment order after granting reasonable opportunity to the petitioner to file objections.

For Petitioner : Mr.S.Sivakumar

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Sivakumar, learned Senior Counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing on behalf of the respondent/ Department. With consent of the learned counsel on either side, the writ petition itself is taken up for final disposal.

2.The petitioner is a registered dealer under Tamil Nadu Value Added Tax Act, 2006 [hereinafter called as the "TNVAT

Act"]. He is engaged in the business of buying and selling of ply woods.

3.The petitioner has challenged the assessment order dated 31.03.2015 for the assessment year 2012-13 mainly on two grounds. Firstly on the ground that it is in violation of the principles of natural justice as the petitioner was not granted clear 15 days time to submit its objection. Second ground of challenge is by stating that the purchases effected from Tvl.Akash Modular Furnitures whose certificate of registration was cancelled with effect from 31.05.2011 and the cancellation of their registration being done with retrospective effect is now put against the petitioner.

4.It is seen that the pre-revision notice dated 11.06.2014 was not served on the petitioner and returned by postal authority. Therefore the second notice was issued on 12.03.2015 which was received by the father of the petitioner on 16.03.2015. Therefore the said date has to be excluded and 15 days period has to be commenced from 17.03.2015 which will expire on 31.03.2015. However, the impugned assessment order has been passed on 31.03.2015, which is without giving 15 clear days to the petitioner.

5.Further more, the petitioner did not have opportunity to produce any record to establish that the cancellation of the registration of the selling dealer was with retrospective effect. Thus, this Court is of the view that the respondent could have afforded reasonable opportunity to the petitioner before finalizing the assessment as has been done by virtue of the impugned order, presumably as the financial year was going to close.

6.Thus, for the reasons, this Court is of the clear view that the writ petition is disposed of by directing the petitioner to treat the impugned proceedings as show cause notice and submit their submissions within 15 days from the date of receipt of a copy of this order. On receipt of the objections the respondent shall afford an opportunity of personal hearing and also make necessary official verification as to whether the cancellation of registration of M/s.Akash Modular Furnitures was with effect or not and after considering all the grounds raised by the petitioner, redo the assessment in accordance with law.

7.In the light of the above direction, the respondent shall not initiate any coercive in respect of tax and penalties as quantified in the impugned order.

8.Accordingly, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer
KK Nagar Assessment Circle
No.16/55 Dr. Govindan Road
West Mambalam, Chennai- 600 033.

+ 1 cc to Mr.S.Sivakumar Advocate,SR.71457

+ 1 cc to The Special Govt.Pleader(T), SR.71349

W.P No.8450 of 2017

SAI(CO)
NR 08/11/2017