IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR.JUSTICE RAJIV SHAKDHER

WRIT PETITION NO.959 OF 2017

& WMP No.957 of 2017

Tvl. Om Electricals and Hardwares
rep. by proprietor Mr.D.Dinesh,
No.7, Marakkanam Main Road,
Murukkeri, Tindivanam,
Villupuram Dist.

.... Petitioner

Vs.

The Dy. Commercial Tax Officer,
Tindivanam Main assessment circle,
Tindivanam, Villupuram District.

.... Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of Writ of Certiorari calling for the records on the files of the respondent proceedings in TIN/33494723819/2012-13 dated 02.12.16 and quash the same being violated the principles of natural justice, illegal, invalid and without authority of law and contrary to principles of natural justice.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.S.Kanmani Annamalai, AGP

O R D E R

1. Issue notice. Mr.S.Kanmani Annamalai, accepts notice on behalf of the respondent.

1.1. With the consent of counsels for parties, the Writ Petition is taken up for final hearing and disposal.

2. This Writ Petition is directed against the order dated 02.12.2016, whereby, the petitioner has been directed to pay tax, in the sum of Rs.2,70,735/- and penalty, in the sum of

Rs.4,06,103.00.

2.1. The principle reason why the respondent has proceeded to pass the impugned order appears to be that, according to the respondent, the petitioner has carried out inter state purchase and, therefore, is not eligible to take the option of paying tax at compounding rate under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006 (in short 'the 2006 Act').

2.2. Notably, the respondent proceeds on the basis that the petitioner did not file any objections to the notice dated 22.09.2016.

3. A perusal of the notice, however, would show that on the face of the impugned order, there is a contradiction, inasmuch as, in the title to the impugned order, i.e., under the heading 'subject', it is indicated that objections were filed by the petitioner, while in the body of the impugned order, it is stated that no objections were filed.

4. The petitioner has placed on record the objections dated 23.10.2016. Via this objection, the petitioner, inter alia, has stated that it is only effecting second and subsequent sale of goods by purchasing goods from within the State.

4.1. It is the stand of the petitioner that it had not undertaken inter state purchase.

5. Therefore, having regard to the aforesaid facts and circumstances, I am inclined to set aside the impugned order.

5.1. It is ordered accordingly.

5.2. It is, however, made clear that the respondent will be at liberty to pass a fresh order, albeit, after giving due opportunity to the petitioner. The respondent will take into account the objections dated 23.10.2016 and also afford personal hearing to the petitioner before passing a fresh order.

5.3. Needless to say, the respondent will furnish all relevant materials, on the basis of which, notice dated 22.09.2016 was issued to the petitioner before proceeding further in the matter.

6. The Writ Petition is disposed of in the aforesaid terms. Resultantly, connected Miscellaneous Petition stands closed. However, there shall be no order as to costs.

sd/
Assistant Registrar(CS III)

/true copy/

Sub Assistant Registrar

sl

To

The Dy. Commercial Tax Officer,
Tindivanam Main assessment circle,
Tindivanam, Villupuram District.

+1cc to Mr.A.Vijayakumar, Advocate SR.No.3097.

+1cc to the Special Government Pleader Sr.No.3275.

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& WMP No.957 of 2017

GMI(CO)
GN(08/02/2017)