IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.10738 of 2017 and
W.M.P.No.11677 of 2017

M/s.Robo Garments,
Rep. by its Proprietor,
D.Ravichandran,
No.5/192, K.G.Nagar,
Pitchampalayam Pudur West,
Sri Nagar, Tirupur - 641 603. ... Petitioner

Vs.

1.The Assistant commissioner (CT),
Tirupur Rural Assessment Circle,
Tirupur.

2.The Commercial Tax Officer,
Group-1, Pollachi. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to call for the impugned proceedings of the first respondent in TIN/33772441934/2015-16 and quash the order dated 12.08.2016 as passed contrary to the provisions of the TNVAT Act and in the absence of any clinching evidence/incriminating records against the petitioner and also contrary to the principles of natural justice and to further forebear the first respondent from passing an assessment order for the assessment year 2015-16 under the TNVAT Act based on the directions given by the second respondent in view of the law laid down by the Division Bench of the Madras High Court in the case of Madras Granites (P) Ltd Vs. Commercial Tax Officer, Arisipalayam Circle reported in 146 STC 642, State of Tamil Nadu Vs. ANS Gupta & Sons reported in 38 VST 45, in the case of Amutha Metals Vs. Commercial Tax Officer, Mannady (East) Assessment Circle reported in 9 VST 478.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh,
Government Advocate

ORDER

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondents. With the consent on either side the writ petition itself is taken up fordisposal.

2.The petitioner, who is a registered dealer on the file of the first respondent under the provisions of the Central Sales Tax Act, 1956 and the Tamil Nadu Value Added Tax Act, 2006, is aggrieved by the impugned order, which is an order of assessment for the year 2015-16, dated 12.08.2016. The petitioner has not contested the demand of tax, but only pleads that one more opportunity may be granted to submit their objections on the equal addition and penalty.

3.On a perusal of the pre-revision notice, dated 30.06.2016, I find that there is no specific averment made as to on what basis, the Assessing Officer proposes equal addition and on what basis, penalty was sought to be levied at 150%. Thus, in the absence of any specific proposal, even assuming that the petitioner had given his objections, it will be an ineffective objection, as the petitioner did not know as to what was passing in the mind of the Assessing Officer to make equal addition and levy penalty at 150%.

4. Since the petitioner has already paid the entire tax, this Court is inclined to grant one more opportunity to the petitioner to submit his objection only with regard to equal addition and penalty. However, for that reason, this Court does not propose to set aside the impugned order, but directs the petitioner to treat the impugned order as a show cause notice in respect of the equal addition and penalty at 150%, and submit their objections, within a period of 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 to the petitioner and re-do the assessment under those two heads in accordance with law.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

abr/pbn

To

1. The Assistant commissioner (CT),
   Tirupur Rural Assessment Circle,
   Tirupur.

2. The Commercial Tax Officer,
   Group-1, Pollachi.

+ 1 cc to Special Givernment Pleader Sr.49442
+ 1 cc to Mr.P. Rajakumar, Advocate Sr.49020

W.P.No.10738 of 2017

SJ(CO)
Eu 1.08.17