IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2017

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.Nos.5889 & 5890 of 2017 and
W.M.P.Nos.6312 & 6313 of 2017

Tvl.SRA Systems Limited,
Represented by its Director,
Mr.V.Thyagarajan,
No.100, Valluvarkottam High Road,
Chennai - 34. ... Petitioner in both WPs

Vs

Commercial Tax Officer,
Adyar Assessment Circle,
Chennai. ... Respondent in both WPs

Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records on the files of the Respondent herein in TIN/33550960380/2013-14 & TIN/33550960380/2014-15 respectively, dated 01.02.2017 and quash the same.

For Petitioner in both Wps : Mr.A.N.R.Jayaprathap

For Respondent in both WPs : Mr.K.Venkatesh Government Advocate

COMMON ORDER

Heard Mr.A.N.R.Jayaprathap, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for the respondent. With the consent on either side, the writ petition is taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax 2006, is aggrieved by an order of assessment dated 01.02.2017 by which the respondent has demanded tax on the ground that the petitioner's turnover exceeds the threshold limit of rupees one Crore. Notice was issued to the petitioner on 17.12.2016 stating that as per amended provisions of Section 63-A read with Rule 16-A of the Tamil Nadu Valud Added Tax Act, 2006, every registered dealer is liable to get his accounts audited as per sub-section (1) of Section 63-A and furnish the audit report in Form WW within nine months from the end of the year, in duplicate. Therefore, the petitioner was requested to file Form WW. The petitioner submitted his reply dated 10.12.2016 stating that for the year 2013-2014, their sales turnover is only Rs.11,48,500/-; for the year 2014-2015, their sales turnover is Rs.80,000/-, which is for the sale of goods and the remaining turnover are only for the services. Therefore, they requested to drop the proposal. Along with the said reply, the petitioner enclosed the Balance Sheet and Profit & Loss Account for the year 2013-2014. Since the case had to be decided based on a Profit & Loss Account and the returns filed before the Service Tax Authorities, the respondent ought to have afforded an opportunity of personal hearing. However, the respondent completed the assessment saying that the contention raised by the petitioner is not comprehensive and in the absence of clarity, the contention cannot be sustained. This is all the more the reason why the respondent should have afforded an opportunity of personal hearing to clarify and to get full details from the petitioner. Without doing so, the respondent has completed the assessment in a summary manner, which calls for interference.

3.In the light of the above, the Writ Petitions are allowed. The impugned orders are set aside and the petitioner is directed to furnish objections clearly explaining the nature of transactions and substantiating that only a sum of Rs.11,48,500/- alone is for sale of goods and the remaining is for services. This should be substantiated by producing necessary documents. On receipt of the petitioner's objections and the documents, the respondent is directed to afford an opportunity of personal hearing and re-do the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

Sgl

To

Commercial Tax Officer,
Adyar Assessment Circle,
Chennai.

+1 CC to Mr.R. Sivaraman, Advocate sr 47071.
+1 CC to Spl. Govt. Pleader sr 46494

W.P.Nos.5889 & 5890 of 2017

SP(02/08/2017)