IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2017

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.31982 of 2017 and
W.M.P.Nos.35141 and 35142 of 2017

Tvl.Harin Bio Tech International Pvt Ltd.,
Represented by its Managing Director,
Samanur Village, Marandahalli Post,
Palacode Taluk, Dharmapuri. ... Petitioner

Vs.

The Commercial Tax Officer,
Palacode. ... Respondent

Prayer : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records of the respondent in CST No.784930/2015-16 dated 26.10.2016 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Mr.Adithya Reddy, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate appearing for the respondent. In the light of the limited issue involved in this writ petition, with the consent of the learned counsel appearing on either side, the writ petition itself is taken up for disposal.

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2.The petitioner who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) is aggrieved by an order of assessment under the CST Act for the assessment year 2015-16. The only issue involved in this writ petition is whether the respondent could have insisted upon filing Form H declaration as required under Section 5(3) of the CST Act. I find from the revision notice dated 23.06.2016 that the respondent did not insist upon filing

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of Form H declaration. The petitioner on receiving the assessment order was shocked to find that assessment has been made and tax has been demanded by stating that every dealer who effected export sales should file the requisite declaration under Section 5(3) of the CST Act. On receipt of the order of assessment, the petitioner sent a representation on 17.03.2017 which is in the nature of a petition under Section 84 of the TNVAT Act stating that the export sales are direct export sales and hence there is no requirement for filing Form H certificate. This representation has been received by the respondent and the matter is still pending.

3.In the light of the above, as there was no specific proposal insisting upon filing of Form H declaration in the pre-revision notice, an assessment could not have been made under the said head without giving an opportunity to the petitioner. Therefore, to that extent the impugned order is in violation of the principles of natural justice. However, since a petition has already been filed on 17.03.2017, this Court is inclined to issue appropriate direction.

4.Accordingly, the writ petition is disposed of by directing the respondent to consider the petitioner's representation dated 17.03.2017 by treating the same as a petition under Section 84 of the TNVAT Act, afford an opportunity of personal hearing to the authorized representative of the petitioner and consider the same and pass appropriate orders on merits in accordance with law. Till such orders are passed, no coercive action shall be initiated against the petitioner for recovering the tax as quantified. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

सत्यमेव जयते

Sub Assistant Registrar

cse
To
The Commercial Tax Officer,
Palacode.

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+1cc to Mr.ADITHYA REDDY, Advocate, S.R.No. 87980
+1cc to the Government Pleader, S.R.No. 88334

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