IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21557 of 2017
and W.M.P.No.22533 of 2017

M/s.Sri Harihara Sudhan Re-boring Centre
Rep. by its Proprietor
S.Gnanasekaran
No.34/7, Old Thanjal Salai
Tiruvarur ... Petitioner

vs

The Deputy Commercial Tax Officer (FAC),
Tiruvarur Assessment Circle,
Tiruvarur.
... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records of the respondent in TIN No.33913921883/2010-2011 dated 28.06.2017 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.K.Venkatesh
Government Advocate(T)

O R D E R

Heard. Mr.K.Soundararajan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate (Tax) accepting notice on behalf of the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu Value Added Tax Act (TNVAT Act), is doing business of engine re-boring. The assessment for the year 2010-2011 was deemed to have been completed under Section 22(2) of the TNVAT Act. The respondent issued notice proposing to revise assessment and granted time to the petitioner to file objection. The petitioner did not file any objection to the notice which led to passing of the order dated 28.05.2015 and confirming the proposal in the notice dated 05.05.2015. The petitioner challenged the order of revised assessment by filing W.P.No.34453 of 2015. The said writ petition along with the connected matters were disposed of by order dated 29.10.2015, giving liberty to the petitioner to file an appeal against the order of the revised assessment. Accordingly, an appeal was preferred in A.P.No.11 of 2016 before the Appellate Deputy Commissioner (CT), Thanjavur. The Appellate Authority by order dated 19.01.2017, allowed the appeal partly and remanded the matter on certain issues. There is no dispute as regards the action initiated by the respondent pursuant to such remand.

3.However, the petitioner is aggrieved by a proposal made in the notice dated 23.05.2017 pointing out a further omission, alleging that the same has been detected on further verification of the Department Website. Along with the said notice, an Annexure was enclosed mentioning the name of the selling dealer, the invoices number, their TIN Number etc. The petitioner submitted a representation on 01.06.2017, requesting copies of the Annexure II reports namely, the old Annexure II, which was the basis for the first revision order dated 28.05.2015.

4.The respondent, though acknowledged the receipt of the said representation, completed the assessment by passing the impugned assessment dated 28.06.2017, stating that the petitioner has not submitted any objection or produced any proof to show that the information reflected in the website is incorrect.

5. This Court has repeatedly pointed out that if assessments are sought to be reopened based on the information culled out from the Official Website, the Assessing Officers cannot assess the dealer to tax without conducting an enquiry and in fact elaborate procedure has been suggested in the decision of this Court in JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [99 VST 343]. However, the respondent did not embark upon any such exercise, though he has admitted in the impugned assessment order that mere information on website may not constitute information. Therefore, the impugned order to the said extent proposing to assess the petitioner to higher rate of tax based on information gathered from the department website has to be set aside.

6. Accordingly, the writ petition is partly allowed and the finding rendered by the Assessing Officer on the proposal made in the notice dated 23.05.2017 is set aside and the matter is remanded back to the respondent for fresh consideration, who shall furnish full particulars as sought for by the petitioner, grant 15 days time to submit their objections and after

affording an opportunity of personal hearing to the petitioner, redo the assessment to the said extent in accordance with law. No Costs. Consequently, the connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

rna/gpa

To

The Deputy Commercial Tax Officer (FAC),
Tiruvarur Assessment Circle,
Tiruvarur.

+1 CC to Mr.K. Soundararajan, Advocate sr 58375.

W.P No.21557 of 2017
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VGII(CO)
sp(12/09/2017)