IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21558 of 2017
and W.M.P.No.22534 of 2017

M/s.Saleem Aircon Agencies,
Rep. By its Proprietor,
A.Mohamed Ismail,
No.230/A1 - E, Baby Talkies Road,
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 or any other appropriate writ, order or direction in the nature of a writ, to call for the records of the Respondent in TIN No.33373921695/2012 - 2013 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.S.Kanmani Annamalai
Additional Government Pleader (T)

O R D E R

Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is aggrieved by an order of assessment passed by the respondent dated 28.06.2017 for the assessment year 2012 - 2013. The grievances of the petitioner is not against the entire assessment order, but only with regard to one issue namely with regard to purchase omission. When the petitioner had challenged the revision of assessment dated

28.05.2015 by filing an Appeal before the Appellate Deputy Commissioner (CT), Thanjavur in A.P.No.12 of 2016, the said appeal was partly allowed and partly remanded by holding that the actual suppression of purchase of Rs.1,26,025/- is not sustainable and the matter is remanded back to the Assessing Officer for fresh disposal after examination of invoices and Annexure - I filed by the petitioner.

3. The petitioner's case is that there was totally five invoices which were pointed out by the respondent proposing revision vide notice dated 09.04.2015 and it is the case of the petitioner that Invoice No.39 dated 19.04.2012 was not reckoned by the respondent while passing the impugned assessment order and if the same has been reckoned, the petitioner's case is that the actual purchase omission would be only Rs.29,750/- as against Rs.65, 925/-. Therefore, the petitioner would state that the impugned assessment order has to be set aside on the said ground.

4.On a perusal of the impugned assessment order, it is seen that though an opportunity was granted to the petitioner to raise the objection, the petitioner has not raised specific objections and the Assessing Officer has considered the relevant invoices and completed the Assessment. Thus, for the fault committed by the petitioner, the impugned assessment order cannot be set aside. However, if there is a factual mistake and the case, as projected by the petitioner is correct, then the petitioner would be entitled for certain monetary reliefs. Hence, this Court is of the view that an opportunity should be granted to the petitioner to go before the Assessing Officer by filing an application under Section 84 of the Tamil Nadu Value Added Tax Act.

5. Accordingly, this writ petition is disposed of by directing the petitioner to file a petition under Section 84 of the TNVAT Act within a period of one week from the date of receipt of a copy of this order raising the contentions as mentioned in this writ petition and on receipt of the application, the respondent shall afford an opportunity of personal hearing to the petitioner and consider the said petition and pass an order on merits and in accordance with law within a period of one week thereafter. No Costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

rna

To

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

+ 1 cc to M/s. K. Soundarajan, Advocate SR.58374

W.P No.21558 of 2017
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PPA(CO)
Eu 6.09.17