IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.21559 of 2017
and W.M.P.Nos.22535 and 22536 of 2017

M/s.Dharani Hitech projects (P) Ltd.,
Represented by its Managing Director,
No.28, Annavasai Street,
Mannargudi. ... Petitioner

vs

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi.
... Respondent

Prayer:- Writ Petition filed under Article 226 of Constitution of India, to issue an order, direction or Writ more so in the nature of Writ of Certiorarified Mandamus to call for the impugned proceeding of the respective in TIN: 33183862872/2014-2015 dated 07.04.2017 and quash the same and further direct the respondent to consider the objections dated 05.12.2016 and the documents filed by the petitioner with an open mind.

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

O R D E R

Heard Mr.P.Rajkumar, 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 is a contractor, engaged in selling ready mix cement concrete mixtures and a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act). This is the second time, the petitioner is before this Court for the very same

Assessment Year 2014 - 2015. Earlier the petitioner filed a writ petition in W.P.No.26151 of 2016 challenging an Assessment Order dated 28.06.2016 on the ground that none of the petitioner's objections have been considered except for extracting the objections and without rendering a finding, Assessment Order was completed. The Court, on considering the impugned order of assessment in the said writ petition dated 28.06.2016, found that none of the objections given by the petitioner were considered and the Assessing Officer had not independently applied his mind. Therefore, the writ petition was allowed and the impugned order was set aside and the matter was remanded for fresh consideration with a direction to afford an opportunity of personal hearing to the petitioner and the respondent was directed to call for necessary documents, give sufficient time to the petitioner to produce supportive documents and after hearing of the petitioner's objection and perusing the records, redo the assessment in accordance with law.

3.It appears that subsequently the Assessing Officer had been transferred and new Assessing Officer had taken charge, who issued notice dated 11.11.2016. The petitioner submitted a detailed objection dated 05.12.2016. It was acknowledged by the respondent. However, it was stated by the respondent that the objections have been given without bills and TDS. Thereafter, the assessment has been completed and the impugned order has been passed. On a prima facie perusal of the impugned assessment order it appears to be a speaking order as it runs almost 10 pages. However, on a closer scrutiny, it is seen that the Assessing Officer did not even apply his mind and what he has done is to extract the earlier Assessment order, earlier Court order and only in the last paragraph, he has stated that copies of records and bill copies were not produced for examination and copies of audit statement of accounts was not given and there is no supportive record. The Assessing Officer had clearly abdicated his statutory responsibility in not following the directions issued by the Court in the earlier writ petition, wherein there is a specific directions to the respondent to call for necessary documents, give sufficient time to the petitioner to produce supportive documents and thereafter, to redo the assessment. Thus, if in the opinion of the respondent, certain documents were lacking, he should have called for the records and then hear the petitioner and complete the Assessment.

4.However, the respondent, without having any regard to the directions issued by the Court in the earlier proceedings, has completed the assessment. The irony is that though the respondent has acknowledged the receipt of the objections dated 05.12.2016, he has not even referred to the objections in the impugned Assessment Order. In fact, the Court would be well within its jurisdiction to initiate contempt proceeding, but, however, desists from doing so.

5.For all the above reasons, the writ petition is allowed, the impugned assessment order dated 07.04.2017 is set aside and the matter is remanded to the respondent for fresh consideration, who shall redo the assessment strictly in accordance with the directions issued in W.P.No.26151 of 2016 dated 05.08.2016, especially the directions contained in para 5 of the said order. No Costs. Consequently, the connected Miscellaneous Petitions are closed.

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

True Copy

Sub-Assistant Registrar

rna

To

The Commercial Tax Officer,
Mannargudi Assessment Circle,
Mannargudi.

+1 CC to Ms. P. Rajkumar, advocate sr 58110.

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MP(CO)
sp(04/09/2017)