IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.32540 of 2017
and W.M.P.No.35867 of 2017

Tvl.Ever Glow Enterprises,
Rep. by its Proprietor,
No.1/60, Paruvathanahalli,
Pennagaram,
Noolahalli Post, Tk.,
Dharmapuri District. ... 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 order dated 09.05.2017 in TIN No.33163291456/2013-14 and quash the same.

For Petitioner : Mr.Adithya Reddy
For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.Adhithya Reddy, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate appearing for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is before this Court challenging an assessment order passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the assessment year 2013-2014. It is seen that the petitioner did not respond to two notices issued by the respondent dated 30.08.2016 and 30.01.2017 and therefore, the respondent proceeded to confirm the proposal in the notices. On a perusal of the notices dated 30.08.2016 and 30.01.2017, I find that they are not show cause notices for revision of the assessment but they are demands demanding tax and penalty from the petitioner in respect of the alleged transactions done by the petitioner with TAMIN during the period 2008-2009 to 2013-2014. Thus, if the notices dated 30.08.2016 and 30.01.2017 are not revision notices, the question of confirming the said proposal would not arise. This is one of the error committed by the respondent in passing the impugned order. Secondly, the allegation made against the petitioner is that they have effected purchase of granite from TAMIN to the tune of 3,09,29,000/-. The petitioner in this writ petition has denied such transactions and stated that the contract between the petitioner and TAMIN stood terminated by proceedings dated 04.07.2011 after which they have not had any transaction with TAMIN. This is very important factor which should be considered because the petitioner is alleged to have had transaction with the Government Company much after 2011. Therefore, this Court is of the view that the matter requires to be re-considered by the Assessing Officer and the assessment to be re-done.

3.In the result, the writ petitioner is disposed of by directing the petitioner to treat the impugned order as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and final orders to be passed in accordance with law. Till such orders are passed, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

cse
To
1. The Deputy Commissioner (CT), Dharmapuri.

2. The Commercial Tax Officer,
Palacode.

+ 1 cc to MR. Adithya Reddy, Advocate SR.89333
+ 1 cc to Government Pleade rSr.89485

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KS(CO)
EU(05/01/2018)