IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.10.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.8907 of 2006 & WPMP No.9860 of 2006

M/s.Sri Krishna Textiles,
No.40/1-E, Karaipudur, Veerapandi. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Palladam Assessment Circle, Palladam. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the impugned proceedings of the respondent in TNGST No.6240267/2002-2003 on his files, and quash the order dated 27.01.2006 passed therein.

For Petitioner : Mr.B.Raveendran

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

Heard Mr.B.Raveendran, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent.

2.The petitioner in this writ petition has challenged the assessment order passed by the respondent dated 27.01.2006, under the provisions of the Tamil Nadu General Sales Tax Act, 1959 (in short "TNGST Act") for the assessment year 2002-03. The reason filed by the petitioner was initially accepted and the deduction claimed by them for sale of clothe was allowed on the entire turnover, pursuant to the verification done by the Departmental officials. The respondent issued a notice to the petitioner dated 24.02.2005, alleging that they have had transaction with four dealers, who are not available in the business premises, their whereabouts not known and they are bill traders. With these allegations, the respondent proposed to revise the total and taxable turnover. The petitioner submitted their elaborate reply dated 15.05.2005, in which the petitioner apart from furnishing the full address of the concerned dealers, also produced the copies of registration certificate of those dealers to show that they have paid fees for renewal of the registration sale bills etc.

3.Thus, according to the petitioner, at the time, when they have effected transaction with those dealers, their registration was valid and they were carrying on business. The petitioner having taken such a stand, the duty which is cast upon the assessing officer is to verify whether the stand taken by the petitioner is justified or not. However, in the impugned order, such exercise has not been done and the respondent merely referred to the averments done in the pre-revision notice dated 24.02.2005, and repeated the allegations with those dealers and bill traders. As mentioner earlier, the pre-revision notice itself was on account of a verification done by the Departmental officials. Thus, on such verification being done, it may give a cause of action for issuing a revision notice. Whereas, when the dealer submits his objections, then, it is the statutory duty of the assessing officer to independently consider the objections, cause necessary verification and if deem appropriate, to enquire into the matter and then take a decision. This procedure has not been followed by the respondent and therefore, there is a serious fraud in the decision making process. Under normal circumstances, the Court would remand the matter for fresh consideration, but in the instant case, as per the peculiar facts, no useful purpose will be served for remanding the matter for fresh consideration, as the respondent has no material to controvert the averments made by the petitioner stating that on the date when they effected transaction, those traders had a valid registration and the transactions are genuine.

For the above reasons, this writ petition is allowed and the impugned order is quashed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

abr

To

The Deputy Commercial Tax Officer,
Palladam Assessment Circle, Palladam.

+1 CC to Mr.B. Raveendran, Advocate sr 75968.
+1 cC to The Spl.Govt. Pleader sr 76019.

W.P.No.8907 of 2006

RJ(CO)
SP(23/11/2017)