IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HON'BLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.3433 of 2017
and W.M.P.No.3412 of 2017

Tvl.Mahendra Hardwares,
Rep by its Proprietor,
Jugal Kishore,
35, Kumbakonam Main Road,
Vadakuthu-607 308. ... Petitioner

Vs.

The Commercial Tax Officer,
Panruty (Rural),
Panruty. ... 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 his proceedings in TIN/33524500557/2011-12 dated 23.12.2016 and quash the same as illegal.

For Petitioner : Mr.P.R.Kumar

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.P.R.Kumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate, appearing for the respondent.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (In short the TNVAT Act) and Central Sales Tax Act (In short CST Act), is aggrieved by the assessment order dated 23.12.2016, for the year 2011-12 under the TNVAT Act. The petitioner was issued a notice dated 25.03.2013 by the respondent, calling upon him to pay tax and interest for the

items mentioned in the notice, which was purchased/sold in the other State, within fifteen days from the date of receiving such notice. On receipt of such notice, the petitioner submitted a reply on 10.04.2013, stating that the product, which was alleged to have been purchased, has not been purchased by them and that to handle the said product, special storage facility is required, as it is a special commodity and they requested for copy of the sale bill issued by the Bharath Petroleum Corporation Limited, so that they can approach them and get proof to show that they have not purchased the goods and without the sale bill, they are unable to proceed further. The petitioner also undertook to file a detailed reply after getting full details from the Bharath Petroleum Corporation Limited. Subsequently, by additional reply dated 27.04.2013, the petitioner reiterated the earlier compliance and stating that no reason for demanding tax and interest from the petitioner.

3. The petitioner obtained information under the Right To Information Act from the Bharath Petroleum Corporation Limited on 12.06.2013, wherein, they have clearly stated that the invoices, which are referred to dated 17.02.2012, do not pertain to the petitioner. The respondent, after taking into consideration the reply filed by the petitioner and the additional reply, rejected the request made by the petitioner and held that the entry made by the Check Post Officer is a valid entry and proposed to re-assess the petitioner by demanding tax.

4. In the counter affidavit also an identical stand has been taken. However, the respondent ought not to have rejected the information received by the petitioner from Bharath Petroleum Corporation Limited, stating that the invoice does not pertain to the petitioner. Therefore, the proper procedure should have been that the sale bill and other details should have been furnished to the petitioner and he should be given an adequate opportunity to put forth their objections. Thus, it is clear that the impugned proceedings are out come of non application of mind and in violation of principles of natural justice.

5. Accordingly, the writ petition is allowed and the impugned order is set aside. The matter is remanded to the respondent with the direction to furnish the copy of the sale bill referred to and relied on by the respondent and grant sufficient time to the petitioner to get appropriate information from Bharath Petroleum Corporation Limited and submit his objections. After receiving the objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs.

Consequently, the connected miscellaneous petition is also closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

vsm

To

The Commercial Tax Officer,
Panruty (Rural),
Panruty.

+1cc to Mr.P.R.Kumar, Advocate sr. 49070

W.P.No.3433 of 2017

EV(CO)
VR(08/08/2017)