IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.24751 of 2017 & W.M.P.No.26125 of 2017

Tvl.Varma Medicals,
Rep. by its Proprietor, K.M.Narayanan,
93 F, Thiruvoodal Street, Thiruvannamalai.
... Petitioner

Vs.

The Commercial Tax Officer,
Thiruvannamalai I Assessment Circle,
Thiruvannamalai.
... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in TIN:33434521995/2015-16 dated 05.07.2017 and quash the same as arbitrary, illegal.

For Petitioner : Mr.T.V.Ganesh

For Respondent : Mrs.Narmadha Sampath, Special Government Pleader

O R D E R

Heard Mr.T.V.Ganesh, learned counsel for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader for the respondent. With consent on either side, this writ petition is taken up for final disposal.

2.The petitioner is aggrieved by an order passed by the respondent dated 05.07.2017, which is an assessment order passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act"). It may not be necessary for this Court to elaborately go into the factual aspects as the impugned order has been challenged on the short ground that it is in gross violation of the order passed by the Appellate Deputy Commissioner (CT), Vellore, in Appeal No.796 of 2016 (VAT) dated 18.01.2017. The petitioner had filed the appeal as against the order of assessment for the very same assessment year viz., 2015-16 dated 24.06.2016. The Appellate Authority allowed the appeal and issued the following directions:

"......As the order of the Assessing Officer is not complying with the provisions of the Act, I set aside the levy of tax on Rs.2,87,18,750/- and remand it back to the Assessing Officer with the direction.

1.To give the details of purchases effected/suppressed by the appellant.

2.To pass assessment orders for each year separately.

3.To adopt the tax paid or to work out the tax dues correctly.

4.To grant an opportunity of personal hearing.

Thus, this portion is Remanded."

3.Thus, in terms of the above directions, the Assessing Officer was first required to furnish the details of the purchases effected/suppressed by the petitioner; pass assessment orders for each years separately; adopt the taxes paid or to work out the tax dues correctly and before doing so, afford an opportunity of personal hearing. On a reading of the impugned order, it is clear that the directions issued by the appellate authority has not been complied with. This is enough to hold that the impugned order is in gross violation of the directions passed by the appellate authority. One more glaring error in the impugned order is that the Assessing Officer did not fix a specific date for personal hearing. The purpose for affording personal hearing is to ensure that the assessment proceedings are completed in a proper manner and the Assessing Officer is able to clarify all doubts that may arise during the assessment proceedings. For this reason, the Hon'ble Division Bench in the case of SRC Projects Private Limited v. Commissioner of Commercial Taxes reported in (2010) 33 VST 333 held that even if the statute remains silent with regard to opportunity of personal hearing yet when complicated factual issues are involved the Assessing Officer should provide an opportunity of personal hearing. The opportunity should be an effective opportunity and it should be fixed on a particular date giving reasonable time to the dealer to appear before the officer. These elementary principles have not been appreciated in a proper manner by the respondent. All these defects are sufficient to hold that the impugned order is not sustainable in law.

4.Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall at the first instance provide all the details of the purchases effected/suppressed by the petitioner and those particulars should be furnished separately for each assessment year and afford reasonable opportunity to the petitioner to submit their objections after which, a date for personal hearing shall be fixed, the petitioner/authorized representative shall be heard in person and the assessment shall be re-done accordingly. No costs. Consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

abr

To

The Commercial Tax Officer,
Thiruvannamalai I Assessment Circle,
Thiruvannamalai.

+1 CC Mr.P.R. KUMAR Advocate SR.No. 68211

EGR 26/10/2017