IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16883 of 2017 &
W.M.P.No.18350 of 2017

M/s.Flipkart India Private Limited,
Rep. by its Senior Director Mr.K.Nithiyanandan,
New Plot No.4/195, SND Warehouse, Surapet,
Chennai - 600 066, presently at No.79,
Kizhmuthalampedu, Panapakkam Village,
Gummidipoondi Taluk, Thiruvallur District,
Pin - 500 008. ... Petitioner

Vs.

The Deputy Commissioner (CT)-I,
Large Taxpayers Unit,
34 (Old No.123), "Dugar Towers",
Marshall Road, Egmore, Chennai - 600 008. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARI to call for the records of the respondent in TIN/33356318770/2016-17 and quash the order dated 08.06.2017 passed therein.

For Petitioner : M/s.Hema Muralikrishnan

For Respondent : Mr.K.Venkatesh,
Government Advocate.

O R D E R

Heard M/s.Hema Muralikrishnan, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side the writ petition itself is taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) is aggrieved by the order dated 08.06.2017 passed by the respondent purportedly to be an order of assessment under Section 27 of the TNVAT Act in respect of the return filed by the petitioner for the month of September 2016.

3.When the writ petition came up for admission on 04.07.2017, it was pointed out by the learned counsel for the petitioner that the impugned assessment order has been passed invoking Section 27 of the TNVAT Act when the fact remains that no order of assessment has been passed under Section 22 of the TNVAT Act and the notice dated 24.10.2016 referred to in the impugned order pertains to provisional assessment in respect of an anterior period covering four months. Recording the said submission, this Court directed the learned Government Advocate to get instructions from the respondent.

4.Based on the instructions obtained, the learned Government Pleader would submit that the officers of the petitioner's company were frequently attending the office of the respondent and it is only they who have furnished the details based on which the impugned order has been passed.

5.It may be true that the officers of the petitioner were visiting the respondent's office and furnishing particulars but however, while making an order of assessment under Section 27 of the TNVAT Act, which is revision of assessment, the procedure required to be followed under the TNVAT Act has to be scrupulously followed. I find that the notice dated 24.10.2016 referred to by the respondent in the impugned order does not pertain to the month September. That apart, the respondent would be justified in invoking Section 27 of the TNVAT Act only when the dealer is deemed to have been assessed under Section 22 of the TNVAT Act. There is no record placed before this Court that the petitioner dealer was assessed for the particular month under Section 22 of the TNVAT Act. Thus, the impugned proceedings being in violation of the procedure contemplated under the Act apart from being violative of the principles of natural justice calls for interference.

6.In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration who shall issue a show cause notice to the petitioner, grant them 15 days time to file their objections and on receipt of the objections, afford an opportunity of personal hearing and proceed to pass an order of assessment in accordance with law. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Deputy Commissioner (CT)-I,
Large Taxpayers Unit,
34 (Old No.123), "Dugar Towers",
Marshall Road, Egmore, Chennai – 600 008.

+1cc to Mr.L.Murali Krishnan,Advocate sr.47165

+1cc to Special Government Pleader (Taxes),sr.47105

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ss(19/7/2017)