IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.18517 of 2017
and W.M.P.No.20083 of 2017

Tvl.Vijayalakshmi Bricks,
Represented by its Proprietor,
S.Dhandapani,
No.199-B, Salem Main Road,
Karimangalam Post,
Palacode Taluk,
Dharmapuri - 635 111. .. Petitioner

..Vs..

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode,
Dharmapuri District. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the 1st respondent in TIN No.33393291475/2012-13 dated 02.06.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.R.Senniappan, 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 final disposal.

2.The petitioner is aggrieved by the order of assessment passed by the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the year 2012-13. The impugned order has been challenged on two grounds. Firstly, on the ground that the tax which can be levied on the sale of bricks is only at 4% and not at 5%. Secondly, it is contended that before demanding tax at the rate of 5%, the respondent did not issue any show cause notice, but directly issued a demand notice along with the penalty. Therefore, it is submitted that the entire proceedings are vitiated.

3.Considering the fact that the petitioner did not have an opportunity to submit their objections to the demand of tax at 5% nor there was an opportunity to contest the levy of penalty, this Court is of the view that the matter should be remanded for fresh consideration.

4.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration with a direction to issue show cause notice to the petitioner and after affording an opportunity to the petitioner to submit their objections followed by the personal hearing, the assessment shall be re-done in accordance with law. It is made clear that the petitioner shall continue to remit the tax at the rate of 4% without any default till fresh orders of assessment are passed by the respondent. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Palacode Assessment Circle,
Palacode,
Dharmapuri District.

+1cc to Special Government Pleader (Taxes) sr.51214

+1cc to Mr.R.Senniappan,Advocate sr.50900

W.P.No.18517 of 2017
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kk(co)
ss(17/8/2017)