IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2017

CORAM:

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

W.P.No.19005 of 2017
and
W.M.P.No.20534 of 2017

M/s. Harini Traders
Represented by its Proprietor,
Kootteripattu Village,
Tindivanam - 604 302 ... Petitioner

Vs.

The Deputy Commercial Tax Officer
Tindivanam. ... Respondent

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for a issuance of Writ of Certiorari, calling for the records of the Respondent in order dated 09.06.2017 in TIN.33374723303/2015-16 and quash the same.

For Petitioner : Mr.Adithya Reddy

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.Adithya Reddy, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate, who accepts notice on behalf of the respondent.

2. With the consent of either side, the writ petition is taken up for disposal.

3. 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 (hereinafter, referred to as "TNVAT Act"), is engaged in the business of Cement and Hardware items. In this writ petition, the petitioner has challenged an order of assessment dated 09.06.2017 for the assessment year 2015-16.

The respondent issued a notice dated 16.09.2016, after perusing the intra net website of the department and stated that the petitioner has effected purchase of goods in Commodity code Nos.315, 2100, 2001 in Tamil Nadu and paid tax. Further, on a perusal of the intra net website, certain purchase details were taken from other dealers Annexure - II for the year 2015-16.

4. It is seen that the petitioner has not reported the purchase value in their monthly returns. Therefore, the respondent opined that the petitioner has not maintained correct and complete accounts and have sold the goods to others and collected tax amount and not reported the department, with an intention to evade payment of tax to the Government. Thus, in the absence of purchase details, it was proposed to add an equal time amount for probable omissions for the said year and total taxable turnover was proposed at Rs.16,32,744/- under Section 22(4) of then TNVAT Act. Apart from that, the respondent also proposed to levy penalty at 150% of the tax due on the actual purchase suppressions.

5. The petitioner received the notice, but did not file any objection, except a letter dated 05.10.2016, requesting for one month time. The respondent after waiting for several months, since no objections were filed by the petitioner, has passed the impugned order. Thus, it is a case, where the petitioner has failed to avail the opportunity granted to them and it is not a case of violation of principles of natural justice. In the absence of any objections, the respondent was justified in confirming the proposal in the notice dated 16.09.2016. However, the assessment is sought to be made on the petitioner under Section 22(4) of the TNVAT Act, by culling out details from the intra net website. Though a copy of the notice dated 16.09.2016 has not been appended in the typed set of papers, the learned counsel for the petitioner submits that the notice does not give the alleged purchase details taken from other dealers Annexure-II. Therefore, even assuming that the petitioner had to submit objection, it cannot be an effective objection.

6. With these facts, the petitioner has approached the respondent by filling a petition under Section 84 of the TNVAT Act on 21.06.2017, which is still pending. Therefore, this Court is inclined to issue appropriate direction to the respondent.

7. In the light of the above, the writ petition is disposed of by directing the respondent to furnish the alleged purchase details taken from other dealers Annexure- II from the intra net website and grant seven days' time to the petitioner to file additional objections, after which, the respondent shall afford an opportunity of personal hearing and pass a speaking order on

the petition dated 21.06.2017 as expeditiously as possible. Till orders are passed as directed, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

svki/sli

To

The Deputy Commercial Tax Officer
Tindivanam.

+1cc to Mr.Adithiya Reddy, Advocate, S.R.No.52659
+1cc to the Special Government Pleader(T), S.R.No.53157

W.P.No.19005 of 2017

GR(CO)
CA(11/08/2017)