IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.19880 of 2017 & W.M.P.No.21477 of 2017

M/s.Sri Ram Traders, Rep. by its Proprietor,
13GH, Vaigunada Perumal Koil Street,
Kancheepuram. ... Petitioner

Vs.

The Assistant Commissioner (CT),
Kancheepuram Assessment Circle. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Certiorari, to call for the records of the respondent in TIN/33181643221/2015-16 and quash the order dated 17.07.2017 passed therein.

For Petitioner : Mrs.Hema Muralikrishnan
For Respondent : Mr.K.Venkatesh, Government Advocate

O R D E R

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

2.The petitioner has challenged the order dated 17.07.2017, which is an assessment order passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short "TNVAT Act") for the assessment year 2015-16. It may not be necessary for this Court to go into the merits of the assessment order, as this Court is prima facie satisfied that the impugned order is a non-speaking order. This conclusion is supported with the following reasons.

3.The respondent has issued a notice dated 17.05.2017, stating that the petitioner has received trade discount, which was not reflected in the monthly returns. The petitioner was directed to produce credit note with Bank Statement in order to ascertain the genuineness of transaction on receipt of the income through discount received from other state. The petitioner submitted their objections, among other things, stating that since discount is received on Interstate Purchase, it will not affect the Input Tax Credit. Subsequently, another notice was issued on 30.05.2017, in which the respondent relied on the decision in India Pistons Case reported in (1974) 33 STC 472 (Madras) stated that the said judgment will apply to the petitioner's case and the discount/rebate availed by the petitioner will attract tax at the rate of 5% along with interest under Section 42(3) of the TNVAT Act. The petitioner filed their objecions dated 01.06.2017, stating that the interstate purchases will not have Input Tax Credit and there is no provision under the TNVAT Act to report the discount received under the Central Sales Tax Act. It was reiterated that they have not claimed any Input Tax Credit on interstate purchases. Once again, the petitioner filed copies of the Bank Account, Ledger Account and copies of all Interstate Purchase bills effected from M/s.Finolex Indutries Ltd. The impugned order has been passed without dealing with the objections and merely stating that the issue is covered by the decision in the case of India Pistons (supra). There is no reason assigned by the respondent dealing with the objections given by the petitioner.

4.Counter affidavit has been filed by the respondent and it is seen that a new officer has taken charge as Assistant Commissioner (CT), Kancheepuram Assessment Circle. The counter affidavit is very detailed affidavit consisting of 10 paragraphs in 5 pages. The reasons assigned in the counter affidavit are not contained in the impugned order. It is an elementary legal principle that an order passed by the quasi-judicial authority should stand by the reasons given in it and reasons cannot be substituted by way of counter affidavit after the quasi-judicial order is challenged before the Court of law. This is precisely what is sought to be done. Law does not permit the respondent to substitute fresh reasons by way of a counter affidavit to sustain the impugned order.

5.Therefore, on that ground, this Court is convinced that the impugned order has to be set aside. However, considering the fact that the matter concernes revenue, this Court is inclined to remand the matter to the respondent for fresh consideration. Accordingly, this writ petition is allowed, the impugned order is quashed and the matter is remanded to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing and re-do the assessment in accordance with law by passing a reasoned order. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

abr

To

The Assistant Commissioner (CT),
Kancheepuram Assessment Circle.

+1 CC to Ms.B. Raveendran, Advocate sr 72749.
+1 CC to SP. Govt. Pleader(T), sr 72773.

W.P.No.19880 of 2017

RSI(CO)
SP(06/11/2017)