IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16371 of 2006

M/s. Life Line Remedies,
118, III Floor, Sullivan Street,
Coimbatore. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Range Gowder Street Circle, Coimbatore.
... Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in TNGST/1762092/2003-04 on the file of the respondent and quash his order dated 02.05.2006 and direct the respondent not to take coersive actions for the balance of entire penalty for the assessment year 2003-04 under the TNGST Act, 1959.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.K.Venkatesh,
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent under the provisions of Tamil Nadu General Sales Tax Act, 1959 ("TNVAT Act" in short) has filed this writ petition challenging the order of assessment dated 02.05.2006 for the assessment year 2003-04 in which it is alleged that there is an excess collection of tax. The Enforcement Wing opined that though the petitioner is eligible to collect the tax already suffered (tax suffered) according to the proviso to Section 22(1) of the TNGST Act, they can collect only the tax collected by their sellers in their sale bills and not on their (dealers) sale value. The Enforcement Wing gave an illustration stating that for instance if the dealers had paid 10 Rupees 50 paisa on their sales which may be Rs.150/-, and they should not collect 15 Rupees 75 paisa on their sale value of Rs.150/-.

3.The allegation against the petitioner was that they have collected tax suffered on their sale value. In this regard, notice was issued by the Enforcement Wing and the petitioner submitted their replies dated 21.12.2004 and 11.03.2005, stating that what they had collected was not only "Tax Suffered" but also "Incidental Charges" and the indication in their sale bills as TS/IC is Tax Suffered and Incidental Charges.

4.The Enforcement Wing Officers had issued notice dated 17.06.2005, directing the petitioner to produce several records and it appears that the petitioner did not produce those records. The Enforcement Wing accordingly proceeded to conclude that the petitioner does not deserve to be granted any indulgence.

5.Though the above averments appeared to be the basis for pre-revision notice, these averments are in fact found in the impugned assessment order. So, to say that the impugned assessment order has been solely proceeded based upon the report of the Enforcement Wing and the Assessing Officer has not rendered any independent finding on the issue, but mechanically followed the Enforcement Wing report partly. The petitioner also has to be blamed as they did not file objections. Even if the petitioner did not file objections, the respondent ought to have given independent reasons and should not have confirmed the proposal in the notice, merely stating that the Enforcement Wing Officer had already concluded that the objections given by the dealer deserve no consideration. If such stand is taken by the Assessing Officer, then the purpose of designating Officer as an Assessing Officer would be lost and the same will be contrary to the aim of the act.

6.Therefore, only on this ground, this Court is inclined to entertain the writ petition and issue appropriate direction. However, for the above said reasons, this Court is not inclined to set aside the impugned proceeding, but would direct the petitioner to treat the impugned proceeding as a show cause notice and submit their objections within a period of15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing and re-do the assessment by independently applying his mind to the objections raised and shall not be solely guided by the observations made by the Enforcement Wing Officer.

With the above direction, this writ petition is disposed of. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

abr
To
The Deputy Commercial Tax Officer,
Range Gowder Street Circle, Coimbatore.

+1cc to Mr.N.R.Rajagopalan,Advocate sr.59592

W.P.No.16371 of 2006

sr(co)
ss(4/9/2017)