IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.01.2017

Coram

THE HONOURABLE MR. JUSTICE RAJIV SHAKDHER

W.P.No.43710 of 2016

and WMP No.37512 of 2016

M/s.Hari Om Stationers,
rep. by its Proprietor,
No.31, Reddy Raman Street,
Chennai-600 079. .. Petitioner

vs.

The Commercial Tax Officer,
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai,
Chennai-600 001. .. Respondent

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, or any other appropriate writ, or order or direction to call for the records of the respondent's first revised order in CST 919377/2015-16, dated 16.09.2016 and the consequential second revised order in No.919377/2015-16, dated 21.10.2016 and quash both the orders as they suffer from gross violation of principles of natural justice and contrary to Section 84(1) of the TNVAT Act, 2006, and to further direct the respondent to re-do the assessment on the basis of document that would be produced by the petitioner by affording an opportunity of personal hearing and thereafter pass orders in accordance with law.

* * *

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

1. Notice in this writ petition was issued on 20.12.2016. Despite service, no counter-affidavit has been filed on behalf of the respondent.

2. This writ petition is directed against the order dated 21.10.2016 passed on the application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 (in short the Act).

3. Learned counsel for the petitioner says that the order is not sustainable, as it refers to matters, which were not adverted to, in the notice dated 09.08.2016.

3.1. According to the learned counsel, the notice adverted to the proposal to reverse the Input Tax Credit (ITC) on the ground that requisite C Form declarations had not been filed by the petitioner.

3.2. Learned counsel for the petitioner says that in the assessment order, which followed the notice dated 09.08.2016, the respondent not only taxed the turn over, which was not covered by the declaration forms, albeit, at the higher rate, i.e., 14.5%, but also, disallowed exemption claimed under Section 8(5) of the Central Sales Tax Act, 1956 (in short the CST Act).

3.3. It is the submission of the petitioner that, therefore, the rectification application was filed, qua the assessment order dated 16.09.2016.

3.4. Learned counsel for the petitioner draws my attention to the impugned order to support his submissions.

3.5. Furthermore, learned counsel submits that while disallowing exemption under Section 8(5) of the CST, 1956, the respondent has also included a sum of Rs.12,70,440/- in respect of the inter-state sales, for which, it is claimed by the respondent that C Forms were filed in excess.

3.6. In sum, it is the submission of the learned counsel for the petitioner that these aforementioned aspects were not adverted to, in the proposal of the respondent, to levy tax, which was communicated via notice dated 09.10.2016, and therefore, the impugned order was at variance with the proposal.

4. This aspect, being apparent, on the face of the record, cannot, but be conceded to, by the learned counsel for the respondent.

5. In these circumstances, the impugned order is set

aside. The respondent is directed to pass a fresh order qua the rectification petition filed by the petitioner under Section 84 of the 2006 Act, after affording due opportunity to the petitioner.

6. The writ petition and the pending application are disposed of in terms of the aforementioned direction. There shall, however, be no order as to costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

gg

To

The Commercial Tax Officer,
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai,
Chennai-600 001.

+1cc to M/s.P.Rajkumar, Advocate sr.3095

+1cc to Special Government Pleader(Taxes),
High Court, Madras sr.3336

W.P.No.43710 of 2016

nri(co)
ss(3/2/2017)