IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.3392 of 2018
and W.M.P.No.4157 of 2018

Thomson Furniture, rep. by its
Proprietor, Mr.K.T.Joseph,
No.1, Head Post Office Road,
Coimbatore-641 001. ... Petitioner

vs.

1.The Commercial Tax Officer (ST),
N.H. Road, Circle, Coimbatore.

2.The Commercial Tax Officer,
Enforcement, Group II,
Coimbatore. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records on the files of the first respondent herein in TIN:33021901232/2015-16 dated 17.01.2018 and to quash the same.

For Petitioner : Mr.K.Narayanan
for Mr.N.Inbarajan

For Respondents : Mrs.G.Dhana Madhri,
Government Advocate

******

O R D E R

Heard Mr.K.Narayanan, learned counsel for Mr.N.Inbarajan, learned counsel for the petitioner and Mrs.G.Dhana Madhri, learned Government Advocate for the respondents. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the first respondent, is aggrieved by the impugned assessment order dated 17.01.2018, for the assessment year 2015-16, under the provisions of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner has challenged the impugned order primarily on three grounds. Firstly, on the ground that, the first respondent failed to follow the decision of this Court in the case of Tvl.Bawa Medicals and another vs. The Commercial Tax Officer, Omalur and another in W.P.Nos.19262 and 19263 of 2017 dated 09.01.2018.

4. The second ground raised by the petitioner is that, without affording an opportunity of personal hearing to the petitioner, the impugned reassessment proceedings have been concluded.

5. The third ground of challenge is by contending that the first respondent did not consider the merits of the submissions made by the petitioner, but mechanically followed the report of the Enforcement Wing.

6. So far as the first issue is concerned, the same was not specifically pleaded by the petitioner before the assessing officer. Therefore, the first respondent cannot be faulted for not dealing with the said issue, as it was not pointed out by the petitioner in their objections dated 12.08.2017.

7. So far as the second issue is concerned, I find that opportunity of personal hearing has not been granted, which is mandatory.

8. Thirdly, the assessing officer being an independent statutory authority has to consider the objections of the assessee uninfluenced by the observations of the Enforcement Wing Officials. The report of the Enforcement Wing can, at best, be a starting point for issuance of pre-revision notice and after objections are filed, the merits of the objections have to be considered independently. Therefore, on grounds two and three, this Court is inclined to issue appropriate direction. However, for such reason, instead of setting aside the impugned order, this Court directs the petitioner to treat the impugned proceedings as a show cause notice and file further objections.

9. In the result, the writ petition is disposed of by directing the petitioner to file further objections by treating the impugned assessment order as a show cause notice within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the first respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. It is open to the petitioner to place all contentions before the first respondent including the decision in Tvl.Bawa Medicals (referred supra). Till fresh orders are passed in terms of the above direction, no coercive action shall be initiated, pursuant to the impugned assessment order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Commercial Tax Officer (ST),
N.H. Road, Circle, Coimbatore.

2.The Commercial Tax Officer,
Enforcement, Group II,
Coimbatore.

+1 cc to M/s.N.Inbarajan Advocate sr 24981
+1 cc to Govt pleader High Court Madras
sr 25308

W.P.No.3392 of 2018

nrl(co)

aa17/04/2018