IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.04.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.7800 of 2018

& W.M.P.No.9712 of 2018

Shri Sharmila Electricals and Electronics,
Represented by its Prop. G.Kumar
No.9-A, Jawahar Road,
Ramanna Nagar,
Perambur, Chennai - 600 011. .. Petitioner

Versus

1.The State of Tamil Nadu
Represented by its Secretary to Govt.
Department of Commercial Taxes,
Fort St. George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Joint Commissioner (C.T)
Enforcement Wing-1,
C.T. Buildings, Greams Road,
Chennai - 600 006.

4.The Commercial Tax Officer Enforcement
Wing Group-III,
C.T. Buildings, Greams Road,
Chennai - 600 006.

5.The Assistant Commissioner (CT)
Sembiam Assessment Circle
No.15, 16-100 feet Road,
Malligai Avenue, Kolatur,
Chennai 600 099. .. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the proceeding in TIN No.33951044065/2014-15, dated 09.03.2018 passed by the 5th respondent and quash the same and to direct the respondents to pass orders after following the procedure contemplated under the TNVAT Act for the assessment year 2014-2015.

For Petitioner : Mr.MD.Ibrahim Ali
For Respondents : Ms.G.Dhana Madhri
Government Advocate

ORDER

Heard Mr.MD.Ibrahim Ali, learned counsel appearing for the petitioner and Ms.G.Dhana Madhri, learned Government Advocate appearing for the respondents. With the consent on either side, the writ petition is taken up for disposal.

2. The petitioner, who is the registered dealer on the file of the fifth respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this writ petition, challenging the order of assessment under the said Act for the assessment year 2014-15.

3. Two grounds have been canvassed by the learned counsel for the petitioner. Firstly, the impugned assessment order is pursuant to a Value Added Tax audit conducted in the business premises of the petitioner and the same is wholly without jurisdiction, on account of the fact that the Commissioner has not authorized such audit, as required under Section 64(4) of the Tamil Nadu Value Added Tax Act, 2006.

4. Secondly, it is contended that the fifth respondent did not consider the objections filed by the petitioner and without affording an opportunity of personal hearing, the assessment has been completed.

5. Sofaras the first contention raised by the learned counsel for the petitioner is concerned, as rightly pointed out by the learned Government that the place of business of the petitioner was not inspected as part of Value Added Tax audit, but it is a surprise verification under Section 65 of the Tamil Nadu Value Added Tax Act, 2006, which gives power to any Officer prescribed by the Government to require a dealer to produce before him the accounts, registers, records and other documents and furnish any other information relating to his business. Therefore, the contention advanced by the learned counsel for the petitioner that Section 64(4) of the said Act, would stand attracted is not tenable, as the sworn statement recorded from the Proprietor of the petitioner clearly shows that what was done was only a surprise verification under Section 65 of the said Act.

6. Sofaras the second contention is concerned, I find force in the submission of the learned counsel for the petitioner that since the fifth respondent did not consider the objections raised by the petitioner to the revision notice, but merely stated that the petitioner had admittedly the defects before the Enforcement Wing Officer, such an observation, should not have been made by the 5th respondent, since she is the Assessing Officer of the petitioner and she has to independently decide the matter based on the objection given by the petitioner to the notice dated 21.11.2017. That apart, before rejecting the objection, the petitioner should have been afforded an opportunity of personal hearing. Therefore, on that ground alone, this Court is convinced that the impugned order calls for interference.

7. Accordingly, this Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the fifth respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, peruse the objections filed by the petitioner and if any documents are required, the same shall be called for and after affording an opportunity of personal hearing, redo the assessment in accordance with law uninfluenced by any observations made in the report filed by the Enforcement Wing Officer. No costs. Consequently, connected miscellaneous petition shall stand closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

vsm

To
1.The State of Tamil Nadu
Represented by its Secretary to Govt.
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Chennai 600 099.

+1cc to the Spl. Government Pleader(Taxes), S.R.No. 25307
+1cc to Mr.M.MD.IBRAHIM ALI, Advocate, S.R.No. 24888

W.P.No.7800 of 2018

SVI(CO)
TR(18/04/2018)