IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2018

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.5872 of 2018
and
W.M.P.No.7210 of 2018

Tvl.S.K.Marbles,
represented by its Proprietor,
Sunil Ajmera,
s.No.47/2, Amanikondalampatty,
By-Pass Road,
Nattamangalam Post,
Salem – 636 010. ..Petitioner

vs.

The Deputy State Tax Officer,
Salem Rural Assessment Circle,
Salem. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the file of respondent in TIN.33902705460/2016-17 dated 06.02.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniapan

For Respondent : Mr.Hariharan
Additional Government Pleader

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O R D E R

Heard Mr.R.Senniappan, learned counsel for petitioner and Mr.Hariharan, learned Additional Government Pleader for respondent.

2. The petitioner, who is a registered dealer on the file of respondent under the provisions of the Tamil Nadu Value Tax Act (hereinafter referred to as 'Act'), has filed this writ petition challenging the assessment order for the year 2016-17. The challenge to the impugned order is on the ground of total lack of jurisdiction as there is no power for the respondent to invoke Section 27 of the Act, to pass an order of revision of assessment in the manner done in the impugned order. The respondent issued notice dated 06.09.2017 alleging that the procurement of marble as to the prevailing rate of Rs.33.05 per sq.ft. includes freight charges. Therefore, based on such estimation, the respondent has stated that he proposes to revise the turn over u/s.27(1)(a) of the Act. The respondent submitted a detailed reply dated 08.12.2017 clearly explaining as to how the purchase price was arrived at and stated that the purchase price including freight is Rs.35.05 per sq.ft. To be noted, that the respondent in the revision notice dated 06.09.2017 estimated Rs.33.05 per sq.ft. whereas the petitioner himself has agreed that the purchase price is Rs.35.05 per sq.ft. including freight charges and other expenses. The assessment authority, after considering the objections and materials placed by the petitioner, accepted

the purchase price as given by the petitioner. The respondent has also accepted the sale value as per trading account of Rs.36,690.53. Only with regard to the closing stock arrived at, the respondent did not accept the petitioner's objection and quantified the tax payable on the alleged sale by multiplying the purchase price with the closing stock quantity and arrived at the closing stock value. With regard to imposing of penalty, the respondent accepted the case of petitioner stating that there is no specific purchase or sales omission and there is no willful suppression and accordingly, the penalty proposed was dropped. As seen from the revision notice dated 06.09.2017, the respondent has invoked Section 27(1)(a) of the Act. The said provision can be invoked only in cases where, for any reason, the whole or any part of assessment of a dealer has escaped assessment to tax. Admittedly, the respondent has not produced any material to show that there is escapement of assessment to tax, more so, when the respondent has accepted the purchase price as well as the sale value of the trading account. The formula adopted by the respondent for arriving at the closing stock value cannot be a ground to invoke Section 27(1)(a) of the Act. Further more, in the impugned order, there is no finding as to how the allegation that there is actual sales omission with regard to the closing stock and how the same come within the purview of Section 27(1)(a) of the Act. Thus, this Court is fully convinced that the impugned order is wholly without jurisdiction.

T.S.SIVAGNANAM, J

gm

For the aforesaid reasons, the Writ Petition is partly allowed and the finding rendered by the respondent with regard to closing stock value and the consequential payment of tax on the said value are set aside. No costs. Connected miscellaneous petition is closed.

13.04.2018

Index : Yes/No
Internet : Yes
gm

To

The Deputy State Tax Officer,
Salem Rural Assessment Circle,
Salem.

W.P.No.5872 of 2018