IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2018

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.6869 of 2018 &
W.M.P. Nos.8509 & 8510 of 2018

M/s.Samy Hardwares
Rep by its Proprietor - S.Jayachandran
No.1/148, Villupuram Main Road
Kandachipuram
Tirukoilur Taluk
Villupuram District .. Petitioner

v.

The Commercial Tax Officer
Tirukoilur
Villupuram District .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his impugned proceedings made in TIN.33724762153/2016-17, dated 17.11.2016 and quash the same.

For Petitioner : Mr.S.Rajasekar

For Respondent : Ms.G.Dhanamadhri
Government Advocate (T)

ORDER

Ms.G.Dhanamadhri, learned Government Advocate (Tax) takes notice for the respondent By consent, the main writ petition itself is taken up for disposal at the admission stage itself.

2. The petitioner has filed the above writ petition to issue a Writ of Certiorari to call for the records on the file of the respondent in his impugned proceedings dated 17.11.2016 and to quash the same.

3. It is the case of the petitioner that it is a dealer in Hardware and assessee on the file of the respondent. For the assessment year 2016-17, the petitioner has field monthly returns in Form K under section 3(4) of the Tamil Nadu Value Added Tax Act, 2006. The petitioner's place of business was inspected by the Enforcement Wing Officials on 28.12.2016 wherein certain alleged defects were noticed. Upon receipt of the Inspector Report, the respondent has issued a Proposal Notices dated 28.04.2017 and 17.10.2017 stating that on verification of the stock held at the time of inspection with reference to the books of accounts revealed suppression and to arrive at the total turnover has made equal time addition. Hence, the entire sales turnover for the year 2016-17 has been assessed under section 27(1)(a) of the Tamil Nadu Value Added Tax Act, 2006 taxable at 14.5%. The respondent has also prosed to levy penalty under section 27(3) of the Act. The Enforcement Wing officials forcibly collected advance tax amount of Rs.11,12,142/- by way of cheque. When the Enforcement Wing Officials under intimidation forcibly collected the above payment, it cannot be termed as if the petitioner has accepted the suppression and paid the tax. The petitioner sought 15 days time for filing objections to the proposal notice but the s the same could not be field in time. Hence, the respondent has passed the order dated 17.11.2016.

4. The learned counsel appearing for the petitioner submitted that the impugned order may be set aside giving liberty to the petitioner to file their objections and put-forth their case before the respondent on terms.

5. Ms.Dhana Madhri, learned Government Advocate (Tax) appearing for the respondent submitted that the petitioner may be directed to pay15% of the tax liability as a condition precedent for setting aside the impugned order and remanding the matter back to the respondent for fresh consideration.

6. In view of the submission made by the learned counsel on either side, since the petitioner has not filed their objections before the respondent, I am of the view that in the interest of justice, the petitioner can be given an opportunity to file their objections. Accordingly, the impugned order dated 17.11.2016 is set aside on condition that the petitioner paying 15% of the tax as computed by the respondent, within a period of three weeks from the date of receipt of a copy of this order and the matter will be remitted back to the respondent for fresh consideration. The respondent is directed to give an opportunity to the petitioner to submit their objections and on receipt of the same, decide the matter afresh after affording an opportunity of personal hearing to the petitioner .

With these observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

rj

To

The Commercial Tax Officer
Tirukoilur
Villupuram District

+1cc to M/s.R.Hemalatha, Advocate, S.R.No.22714

+1cc to the Special Government Pleader(taxes), S.R.No.23460

RRK(16/04/2018)