In the High Court of Judicature at Madras

Dated : 29.06.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.11462 to 11465 of 2018
&
W.M.P.Nos.13384 to 13387 of 2018

Tvl.Mercy Hardware
Represented by its Proprietor
K.Ganesan
No.1/202, Kumbakonam Chennai Main Road
Meensuruty
Udayarpalayam TK
Ariyalur Dt. ... Petitioner

Vs.

The Commercial Tax Officer
Jayankodam ...Respondent

Writ petition filed under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari calling for the records on the files of the respondent in TIN 33763623157/2015-16 dated 23.03.2018 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioners : Mr.R.Senniappan

For Respondent : Ms.G.Dhanamadhri
Government Advocate

COMMON ORDER

Heard Mr.R.Senniappan, learned counsel for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2.The petitioner has filed this writ petition challenging the Assessment Orders under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the Assessment years 2013-14 to 2015-16. On a perusal of the impugned order, I find that the objections given by the dealer have not been discussed and no speaking order has been passed, though the Assessing Officer has verbatim extracted the objection submitted by the dealer by showing the same in italics in the impugned order.

3. In the counter affidavit, the respondent would state that at the time of inspection, the petitioner has not produced the original purchase bills. Learned counsel for the petitioner points out that on 13.03.2018, the petitioner appeared before the respondent and while submitting their explanation to the revision notice, has given the purchase bills, which tallied with the signed financial statement and requested the officer to peruse the same. Apart from that, the petitioner has also given certain

explanation as to why certain purchases were omitted, because the Proprietor has withdrawn certain materials for his personal use and a separate explanation has been given for each assessment year. What was expected of the respondent to do, is to consider the explanation offered by the petitioner and then consider as to whether the proposal in the notice dated 27.02.2018 should be confirmed or not. While taking such a decision, the respondent should adopt an independent approach to the matter, not solely guided by the report of Enforcement Wing Officers, as the respondent being the Assessing Officer is entitled to take an independent decision in the matter. The respondent, who has not discussed the case in a proper manner while completing the assessment, cannot be permitted to improve the stand by way of a counter affidavit. Challenge to the assessment proceedings should stand or fall on the reasons contained therein. As observed earlier, there is no reason assigned by the respondent in the impugned Assessment Order. Therefore, I am of the view that the assessment should be redone.

In the result, the writ petition is allowed and the impugned assessment orders set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner, call for the records from the petitioner, verify the same and if any clarification is required, call for such clarification and complete the assessment by taking an interdependent decision in the matter uninfluenced by the report of the Enforcement Wing and pass a speaking order on merits and in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

29.06.2018

Speaking (or) Non Speaking Order

Index : Yes (or) No

Internet : Yes (or) No

To

The Commercial Tax Officer
Jayankodam

T.S.SIVAGNANAM,J

gpa

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