IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13320 of 2018
and
W.M.P.No.15688 of 2018

M/s.Excel Engineering Enterprises,
Rep. by its Proprietor, Mr.G.Kumaresan,
No.63, Tamaraikulam, Elagiri Village Post,
Jolarpettai, Vellore-635 853. ... Petitioner

vs.

The Assistant Commissioner (CT),
Thirupattur Assessment Circle,
No.66, Sama Nagar, Thirupattur-635 601. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the impugned proceedings of the respondent in TIN 33044621586/2015-16 and to quash the impugned order dated 28.03.2018 as passed contrary to the provisions of the TNVAT Act and against the principles of natural justice.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent. With consent on either side, this writ petition is taken up for final disposal.

2. The petitioner has filed this writ petition challenging the assessment order under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as "the TNVAT Act") dated 28.03.2018 for the assessment year 2015-16 primarily on two grounds.

3. The first ground on which the petitioner has challenged the assessment order is on the ground that the revision notices dated 29.11.2017 and 09.03.2013 were not served on the petitioner. The second ground is that the paver finisher machine purchased by the petitioner is not a motor vehicle and is not capable of plying on the road and therefore, the demand of entry tax is not acceptable.

4. The learned Government Advocate has produced a copy of the registration slip to justify the stand that the revision notices were despatched by registered post on 05.12.2017. However, in the absence of a postal acknowledgment card, it cannot be taken that the revision notices have been served on the petitioner.

5. With regard to the second contention, it is relevant to take note of the decision in the case of Rds Projects Ltd. vs. Commercial Tax Officer reported in [2007] 8 VST 574 (Mad.). In the said case, the Hon'ble Division Bench was considering as to whether entry tax is payable in respect of the Hydraulic Excavator, wherein it was held that the excavators are not motor vehicles falling within the definition of the term as defined under Section 2(28) of the Motor Vehicles Act, 1988.

6. Considering the above facts, this Court is of the view that the assessment should be redone by considering the petitioner's objections. In the result, this writ petition is disposed of by directing the petitioner to treat the impugned order as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall consider the same as well as the documents on brochures that the petitioner may produce and if necessary, the respondent can inspect the equipment and then after affording an effective opportunity of personal hearing, redo the assessment in accordance with law. Till the assessment is completed in terms of the above direction, no coercive action shall be initiated against the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Thirupattur Assessment Circle,
No.66, Sama Nagar, Thirupattur-635 601.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.36504

+1cc to the Spl Government Pleader, S.R.No.37646

W.P.No.13320 of 2018

RJ(CO)
GSP(29/06/2018)