IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.6.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.14052 OF 2018 & WMP.NO.16606 OF 2018

Seven Hills Peb Systems Private
Ltd., rep.by its Managing Director
P.Harinarayanan ...Petitioner

Vs

The Assistant Commissioner (CT)
(FAC), Thiruverkadu Assessment
Circle, No.2, Alagiri Street,
Thenpalani Nagar, Kolathur,
Chennai-9. r...Respondent

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records on the file of the respondent herein in TIN : 33891349842/2014-15 dated 27.4.2018 and quash the same.

For Petitioner : Mr.M.Inbarajan

For Respondent : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. In view of the fact that the petitioner did not have adequate opportunity to controvert the assessment of tax at 5% for the sale of Rs.4,39,04,717/-, this Court is inclined to take up the writ petition for final disposal even at the admission stage.

2. The undisputed fact being that the petitioner sent their interim reply dated 27.7.2017 to the show cause notice dated 11.7.2017 and further detailed reply dated 10.8.2017. Thereafter, the petitioner appears to have been called in person by the Assessing Officer and in the course of discussion, certain clarifications were sought for with regard to the excise duty/service tax, pursuant to which, the petitioner had given a written representation dated 14.2.2018. The sum and substance of

the contents of the said representation is that in respect of the works contract sales, excise duty cannot be claimed separately whereas the excise duty paid by them initially was adjusted against the service tax collected from the clients.

3. Though such a stand was taken in their representation dated 14.2.2018, adequate proof of payment of excise duty/adjustment of the same has not been produced before the respondent. The respondent, while completing the assessment and passing the order, dropped the proposal with regard to the difference in total turnover of Rs.89,18,475/-. However, taking note of the representation dated 14.2.2018, the respondent proceeded to analyze the aspect of payment of excise duty and rejected the argument of the petitioner stating that they had not proved the initial payment of excise duty and the adjustment said to have been made by them subsequently.

4. In my view, if the respondent was not fully convinced with the contents of the said representation dated 14.2.2018, a show cause notice could have been issued to the petitioner on this aspect alone and a decision could have been taken or the petitioner could have been directed to produce necessary proof of initial payment of excise duty and the subsequent adjustment thereof. Since both the above procedure have not been followed by the respondent, there is a violation of the principles of natural justice. Hence, for this reason alone, this Court is inclined to dispose of the writ petition with appropriate directions.

5. In the result, the writ petition is disposed of with a direction to the petitioner to treat the impugned proceedings as a show cause notice and submit their reply including adequate proof of initial payment of excise duty and the subsequent adjustment stated to have been done, within a period of 15 days from the date of receipt of a copy of this order. On receipt of the reply, the respondent shall fix a date for final hearing, verify the records that the petitioner may produce and redo the assessment in accordance with law. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

RS

To

The Assistant Commissioner (CT) (FAC),
Thiruverkadu Assessment Circle,
No.2, Alagiri Street, Thenpalani Nagar,
Kolathur, Chennai-9.

+1cc to Mr.M.Inbarajan, Advocate, S.R.No.36399

WP.No.14052 of 2018&
WMP.No.16606 of 2018

VGII(CO)
CS/22/06/2018