IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.14909 of 2018
&
W.M.P.No. 17624 of 2018

M/s.Lan Mark Shops India Pvt. Ltd.,
represented by its Account Executive
Mr.N.Selvam
No.616, 2nd Floor, Annasalai
Chennai- 600 006 ... Petitioner

Vs.

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle
88, Mayor Ramanthan Road
Chennai - 600 031 ...Respondent

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorari calling for the records on the file of the respondent in TIN No.33820462088/2014-15 dated 31.05.2018 and quash the same as being without jurisdiction, authority of law and the principles of natural justice.

For Petitioner : Mr.R.Senniappan

For Respondent : Ms.G.Dhanamadhri
Government Advocate

O R D E R

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

2.The petitioner is aggrieved by the impugned Assessment Order dated 31.05.2018 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) for the assessment year 2014-15. The only issue which falls for consideration is whether the petitioner has produced the supportive documents to support their contention that the sales turn over to the tune of Rs.65,45,647/- relates to the goods falling under Entry in SI.No.4 and SI.No.68 in Part-B of the I Schedule to the TNVAT

Act. The Assessing Officer, while accepting the documents produced by the petitioner, has stated that the petitioner has produced documents only to the extent of Rs.5,19,326/- and accordingly levied 5% tax on the said turnover and for the remaining amount, the Assessing Officer has taxed the petitioner at 14.5% on the ground that the documents have not been filed by the petitioner.

3. The learned counsel for the petitioner submitted that even in the explanation given by the petitioner, they have clearly stated that all documents in support of their contention have been enclosed and this reply has been extracted by the Assessing officer in Page 2 of the impugned Assessment Order. Therefore, it is submitted that it is an incorrect statement that the petitioner has not submitted documents for the claimed turnover. In any event, the respondent could have afforded an opportunity of personal hearing before completing the assessment, especially when the same is sought to be revised based upon a proposal received from the Enforcement wing official.

3. Thus, for the above reasons, this writ petition is disposed of by directing the petitioner to once again file a fresh objection with regard to the turnover to the tune of Rs.60,26,321/- and enclose one more set of documents and submit the same to the respondent within a period of ten days from the date of receipt of a copy of this order. The respondent shall afford an opportunity of personal hearing to the petitioner and take an independent decision without being influenced by any direction from the higher officer. This direction is issued in the light of the decision of the Hon'ble Division Bench of this court in Madras Granites (P) Ltd., Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another reported in 2009 146 STC 642 (Mad), wherein the Hon'ble Division Bench held that the Assessing Officer is a quasi-judicial authority and in exercising his quasi-judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. The respondent is directed to pass fresh orders within a period of three weeks from the date on which the personal hearing is completed. Till then, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CS-IX)

True Copy

Sub-Assistant Registrar

gpa

To

The Assistant Commissioner (ST)
Nungambakkam Assessment Circle
88, Mayor Ramanthan Road
Chennai - 600 031

+1 CC to Mr.R.Senniappan, Advocate sr 39317.
+1 CC to Govt. Pleader sr 39694

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EV(CO)
SP(03/07/2018)