IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.01.2018

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.22302 of 2013
and MP.No.1 of 2013

M/s.Daikin Air-Conditioning India (P) Ltd.,
Rep. by its Authorized Signatory Mr.M.Muraledhar,
No.484, Anna Salai, CHennai - 600 018. ...Petitioner

Vs.

1.The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Joint Commissioner (Enforcement),
No.4, Vellore Fort Road, Vellore. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent in TIN/33691561412/2011-12 quash the impugned order dated 28.06.2013 passed pursuant to the Circular No.Q3/38402/11 dated 31.10.2011 and further direct the first respondent to conduct an "enquiry" and grant a fair and reasonable opportunity including a "personal hearing" as held by the Tamil Nadu Taxation Special Tribunal in the decision reported in (1999) 114 STC 570 and thereafter pass orders in accordance with law.

For Petitioner : Mr.V.Sundareswaran

For Respondents : M/s.G.Dhanamadhri
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel for the petitioner and M/s.G.Dhanamadhri, learned Government Advocate for the respondents.

2.The petitioner who is the registered dealer on the file of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act, 1956 (CST Act) is aggrieved by an order of assessment dated 28.06.2013 for the assessment year 2011-2012 by stating that as per circular dated 31.10.2011 issued by the Commissioner of Commercial Taxes, the transit pass should have been surrendered at the designated check posts in time by duly entering and acknowledging in the website within 24 hours of its surrender. The petitioner had separately filed a writ petition challenging the circular dated 31.10.2011 in W.P.No.33203 of 2013, which has been disposed of by the Court on 08.01.2018 on the ground that another circular has been issued by the Commissioner bearing Circular No.26/2014 dated 16.06.2014 which would cover the field. In any event, it has to be seen as to whether the manner in which the respondent completed the assessment was proper. On receipt of the revision notice, the petitioner submitted two representations dated 05.07.2013 requesting for an effective opportunity to put forth their case and stating that as per their records, they have not effected any sales attracting transit pass provisions as mentioned by the first respondent and requested the first respondent to provide itemized listing to enable them to verify the records and revert back. These representations are shown to have been served in the office of the respondent as per the endorsement in the letter delivery book dated 05.07.2013.

3.Though the Court directed the respondents to verify the records and state as to whether the representations have been received, till date, the first respondent has not given any written instructions to the learned Government Advocate.

4.Be that as it may, the impugned assessment order has been though dated 28.06.2013, has been served on the petitioner only on 10.07.2013. Therefore, I am of the view that the stand taken by the petitioner is acceptable that on the date when the order was despatched, the request made by the petitioner for furnishing details was very much available in the file of the first respondent. That apart, on account of the subsequent development, this Court is convinced that the assessment requires to be re-done, i.e. on account of the order passed by the first respondent under the provisions of the CST Act for they very same assessment year 2011-2012 accepting the majority of the transactions as sales effected outside the State of Tamil Nadu and the Form C declarations filed by the petitioner have been accepted. This, it is a fit case where assessment should re-done.

5.Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded back to the first respondent with a direction to furnish the details sought for by the petitioner, i.e. itemized listing and the petitioner should be granted minimum fifteen days time from the date on which the details are received by them to submit their objections after which an opportunity of personal hearing shall be afforded to the authorized representative of the petitioner and all issues to be considered by the first respondent including the effect of assessment order under the CST Act and re-do the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

-sd/-
Assistant Registrar

/ TRUE COPY /

Sub-Assistant Registrar

cse

To

1.The Assistant Commissioner (CT),
T.Nagar Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

2.The Principal Secretary/
Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Joint Commissioner (Enforcement),
No.4, Vellore Fort Road, Vellore.

+1 cc TO MR.V.SUNDARESWARAN Advocate SR.NO. 1349
+1 cc to SPECIAL Government pleader SR.NO. 1679

W.P.No.22302 of 2013
and MP.No.1 of 2013

ssi[co]
RD 03/02/2018