IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2018

CORAM

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

W.P.No.15758 of 2018 &
W.M.P.Nos.18709 & 18710 of 2018

M/s.Shri Velmurugan & Co
Rep. by its Partner P.Jayaraj
1/11-1, Karumapuram, Ayyampalayam Post
Pollachi, Coimbatore District. ...Petitioner

v.

The Assistant Commissioner(ST)
Pollachi Rural Assessment Circle
Pollachi, Coimbatore District. ...Respondent

Writ Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN 33292285252/13-14, dated 14.05.2018 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan

For Respondent : Ms.G.Dhanamadhri
Govt. Advocate

ORDER

HeardMr.S.Ramanathan, learned appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondent.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and the Central Sales Tax Act, 1956. He is aggrieved by the order passed by the respondent for the year 2013-14.

3. After elaborately hearing the learned counsel for the petitioner, this Court finds that all the issues raised by the petitioner challenging the assessment order are factual in nature, which cannot be adjudicated in a writ petition. Therefore, the proper course available to the petitioner is to file an appeal before the Deputy Commissioner (CT) (Appeal), Pollachi.

4. However, it is pointed out by the learned counsel for the petitioner that an opportunity of personal hearing was not granted, especially when the assessment has been completed on best of judgment

basis invoking the power under Section 22(4) of the said Act.

5. On a perusal of the impugned assessment order, it is seen that no opportunity of personal hearing was granted to the petitioner as required in terms of the Proviso to Section 22(4) of the said Act. When the Statute mandates an opportunity of personal hearing to be granted, without doing so, the respondent could not have finalized the assessment.

6. One more contention advanced by the learned counsel for the petitioner is that with regard to penalty, which has been imposed on the turnover estimated by the Assessing Officer in respect of probable omission, in terms of Explanation (ii) to Section 22(5) of the said Act, the turnover, which has been estimated as probable omission, could not have been included for the purpose of levying penalty.

7. In the light of the above two grounds alone, this Court is inclined to remit the matter back to the respondent for a fresh consideration.

8. Accordingly, the writ petition is disposed of with a direction to the

petitioner to treat the impugned order as a show cause notice and submit their further objections, which should be detailed objections and should include records in support of their stand, within a period of 15 days from the date of receipt of a copy of this order. The petitioner is also entitled to raise the legal issues, which have been canvassed before this Court. On receipt of the further objections, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Till then, no coercive action shall be initiated against the petitioner for recovery of tax and penalty as quantified in the impugned assessment order. No costs. Consequently, the connected miscellaneous petitions are closed.

27.06.2018

Index : Yes/No

Speaking Order/Non Speaking Order

Rj

To
The Assistant Commissioner(ST)
Pollachi Rural Assessment Circle
Pollachi, Coimbatore District.

T.S.SIVAGNANAM,J

Rj

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