IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.15851 of 2018 &

W.M.P.No.18914 of 2018

Tvl. Lakshmi Hardware
Rep. by its proprietor
S.Balamurugan
No.15/1 G.H.Road, Vellippalayam
Nagapattinam .. Petitioner

v.

The State Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Building
Court Campus, Velipalayam
Nagapattinam .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in TIN/ 33563901851/2013-14, dated 11.05.2018 and quash the same as arbitrary and illegal.

For Petitioner : Mr.P.R. Kumar
For Respondent : Ms.G.Dhanamadhri
Government Advocate

ORDER

Heard Mr.P.R. Kumar, learned counsel appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate, accepting notice on behalf of the respondent. In the light of the glaring error, which are manifest on the face of the impugned order, the writ petition is taken up for disposal.

2. The respondent issued notice dated 12.04.2018 stating that on verification of the Form WW for the assessment year 2013-14, it was found that the dealer has effected purchase to an amount of Rs.1,01,66,692/-. But, on verification of other end dealers annexure II, vide Departmental Website, it has come to understand that the dealer has effected purchase to an amount of Rs.1,66,10,025/-. Therefore, the respondent proposed that the purchase turnover of Rs.64,43,333/- has not been reported to the Government through monthly return and the omitted purchase turnover is liable to be taxed. The

respondent added Gross Profit @ 5%, freight charges @ 2% and arrived at the proposal of omitted taxable turnover of Rs.69,00,810/-. The tax due was confirmed at 5% and penalty was levied and totally, the respondent proposed to demand Rs.15,00,926/-.

3. The petitioner filed their objections dated 15.05.2018. The respondent after receiving the objections, has examined the same and accepted the stand taken by the petitioner partially for the month of April 2014. With regard to the purchase effected to the tune of Rs.6,39,966/-, proportionate in put tax credit was drawn. However, I find that there was no discussion with regard to the remaining purchase turnover. If the respondent was not satisfied with the documents produced by the dealer, then, the respondent could have recorded so in the impugned order. Furthermore, the respondent did not afford an opportunity of personal hearing to the petitioner and this is an one more error which has to be corrected.

4. Accordingly, the Writ Petition is allowed and the impugned order is set aside in so far as it relates to the purchase turnover excluding Rs.6,39,966/-, for which already relief has been granted. The respondent is directed to fix a date for personal hearing, hear the petitioner/authorised representative, peruse the documents produced by the petitioner and enquire into the matter, since the case is one pertaining to mismatch of the details as culled out from the official website of the Department and therefore, pass a speaking order, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Rj
To
The State Tax Officer
Nagapattinam Assessment Circle
Commercial Taxes Building
Court Campus, Velipalayam ,Nagapattinam

+1cc to Mr.P.R.KUMAR, Advocate, S.R.No.41178
+1cc to the Government Pleader, S.R.No.42027

W.P.No.15851 of 2018 &
W.M.P.No.18914 of 2018

TR(09/07/2018)