IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16710 of 2018
and
W.M.P.No.19900 of 2018

M/s.Compuage Infocom Ltd
Represented by its Authorised Signatory,
Mr.P.Balamurugan,
Nagappa Centre, No.2 Lalithapuram,
Gowdiayamutt Road, Royapettah,
Chennai - 600 014.
.. Petitioner

Versus

The State Tax Officer,
Commercial Tax Department,
Royapettah Assessment Circle,
No.48, Pusumpon Muthuramalinga Thevar Salai,
Chennai - 600 028.
.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order dated 07.06.2018 in proceedings CST/698202/2015-16 issued by the respondent and quash the same and further direct the respondent to pass fresh assessment order after taking into account the documents submitted by the petitioner on various dates.

For Petitioner : M/S.Hari Radhakrishnan

For Respondent : Ms.G.Dhana Madhri
Government Advocate



ORDER

Heard M/s.Hari Radhakrishnan, learned counsel appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate appearing for the respondents. With the consent of either side, the writ petition is taken up for disposal. Apart from that, this Court found that there is an error in the decision-making process and error of law committed by the respondent while passing the impugned assessment order. Therefore, the writ petition is taken up for disposal.

2. The petitioner on receipt of revision notice dated 16.04.2018 submitted their reply dated 18.04.2018, wherein they have stated as follows:-

> "We have submitted all C and F Forms in original for the value C Form Rs.953088/- and F Forms Rs.204,25,53,409/- The balance C form Rs.122400 & F Forms Rs.17905/- not available, you Pl. take the note of it. Further to inform you that it is pertaining to supply of Information Technology products.
>
> Further, branch transfer out of local purchase is declared and reported in Monthly returns filed with TN Vat Act, therefore , Pl.take the note thereof.
>
> Hence assessment order may be passed for the year 2015-2016 under the CST & VAT Act."

3. The respondent while completing the assessment has construed the above letter as an acceptance letter for the proposal in the notice dated 16.04.2018. On a reading of the reply dated 18.04.2018, I find that it is not an acceptance of the proposal made by the respondent. An acceptance or an admission should be unequivocal and should be out of own volition of the person making such an admission. I find, there is no such admission in the letter dated 18.04.2018. That apart, the respondent has demanded tax to the tune of Rs.13,53.072/-. However, in the notice dated 16.04.2018, there is no such proposal except for the proposal with regard to total turn over. This is also one more error in the impugned order. Thus, for the above reason, the impugned order is liable to be set aside.

4. In the result, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner, consider their objections and pass a speaking and reasoned order on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

msrm/sra

To

The State Tax Officer,
Commercial Tax Department,
Royapettah Assessment Circle,
No.48, Pusumpon Muthuramalinga Thevar Salai,
Chennai - 600 028.

+1cc to M/S.Hari Radhakrishnan, Advocate sr.no.43825
+1cc to Special Government Pleader in sr.no.44164

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mr(co)
nr 19/07/2018