IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.33879 of 2013 and M.P.No.1 of 2013

M/s.Vijay Aqua Pipes (P) Ltd.,
Rep. by its Director, T.Chidambaram,
N1, First Link Street, Raghavan Colony,
Jafferkhanpet, Chennai-600 083. ... Petitioner

vs.

The Assistant Commissioner (CT),
Saidapet Assessment Circle,
Chennai-15. ... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the respondent in RC No.359/2013 and to quash the proceedings dated 19.07.2013 issued therein.

For Petitioner : Mr.Muralikrishnan

For Respondents : Mrs.G.Dhanamadhri,
Government Advocate (Taxes)

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O R D E R

Heard Mr.Muralikrsihnan, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate (Taxes) for the respondent.

2. The petitioner has filed this writ petition challenging a notice issued by the respondent directing the petitioner to pay arrears of sales tax. The challenge to the impugned notice is on the ground that it is erroneous and the amount mentioned in the notice is incorrect and the respondent, without affording reasonable opportunity to the petitioner, has issued the impugned notice.

3. The learned Government Advocate based on the written instructions given by the respondent to the learned Special

Government Pleader (Taxes) vide letter dated 16.03.2018, submitted that the dealers have done business in the year 1992 and availed IFST Loan from the Government repayable from 2001-02 to 2009-10 for the loan availed for the period from 1992-93 to 2000-01.

4. It is further submitted that after the financial year 2001-02, periodical assessments have been made under the Tamil Nadu General Sales Tax Act, 1959 and the Central Sales Tax Act, 1956 and assessment orders were forwarded to the petitioner and demand has been raised. The petitioner has failed to pay the tax amount and closed down their business activity in the year 2003 and electricity supply was also disconnected. Based on the information received from the office of the Assistant Commissioner (CT), Ponneri, the impugned notice has been issued.

5. It is the further submission of the learned Government Advocate that the dealers have stated that the actual total is Rs.86,66,050/- only. Where as it is shown as Rs.1,17,40,203/- and there is difference of Rs.30,74,153/-. It is actually, the difference in penalty. First there was an ODR issued from the office of the Assistant Commissioner (CT), Ponneri Assessment Circle, the penalty mentioned is Rs.40,24,116/- and a revised ODR was received and the penalty mentioned is Rs.70,78,319/-. Hence, there is no excess of tax difference is payable from the dealer as claimed by the dealer.

6. On the above submissions, the learned Government Advocate submitted that the writ petition is liable to be dismissed.

7. After hearing the learned counsels for a considerable length of time, this Court is of the view that due to the fact that the unit has been closed down for a quite number of years, there appears to be certain disputes raised by the petitioner with regard to amount payable.

8. On the other hand, the respondent would submit that the difference has occurred on account of the penalty, as there was a first ODR issued from the Ponneri Assessment Circle in which penalty has been mentioned as Rs.40,24,116/- and a revised ODR was received mentioning the penalty as Rs.70,78,319/- and there is no excess difference as claimed by the petitioner. However, in my considered view, this aspect needs to be reconciled in a proper manner after affording an opportunity to the petitioner

and this cannot be done in a summary fashion, since admittedly, the unit had been closed down in the year 2003. The petitioner's case is that their unit has been revived in the year 2008. In any event, the petitioner should go before the Assessing officer and explain their stand.

9. In the result, this writ petition is disposed of by directing the petitioner to treat the impugned notice as a show cause notice and submit their objections to the demand raised. In the objections, the petitioner is entitled to point out as to whether the entire demand as demanded is incorrect or part of it is incorrect and as to what is their stand and what according to them is their liability. If the reply is given, the respondent shall afford an opportunity of personal hearing and pass a speaking order on merits and in accordance with law. The objections should be filed by the petitioner within a period of three weeks' from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

abr

To

The Assistant Commissioner (CT),
Saidapet Assessment Circle,
Chennai-15.

+1cc to the Special Government Pleader, S.R.No.39690

W.P.No.33879 of 2013

CS/09/07/18