In the High Court of Judicature at Madras

Dated : 18.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.18174 & 18175 of 2018 &
WMP.Nos.21477 & 21478 of 2018

Tvl.Sri Ganesh Electricals, rep.
by its Proprietor Mr.Dudaram ...Petitioner

Vs

The Deputy State Tax Officer,
Thirukazhukundram Assessment
Circle, No.42, Wahab Nagar,
Thirukazhukundram-603109. ...Respondent

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records of the respondent in TIN/33061609337/2014-15 and TIN/33061609337/2015-16, respectively both dated 04.5.2018 and quash the same as arbitrary and illegal.

For Petitioner : Mr.S.Ramanan

For Respondent : Mrs.G.Dhana Madhri, GA

COMMON ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner is aggrieved by the assessment orders passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the years 2014-15 and 2015-16.

3. So far as the assessment year 2014-15 is concerned, the petitioner's case is that the turnover is below the threshold limit of Rs.10 lakhs and only to bring it above the limit, 50% of probable omission was added, which is uncalled for. So far as the assessment year 2015-16 is concerned, there were six transactions, which were pointed out by the Assessing Officer, which the petitioner had not reported in direct terms. The petitioner reconciled three of the transactions and for the remaining three transactions, the petitioner would state that

they had not effected purchases. However, without conducting any enquiry, the respondent confirmed the proposal in the show cause notices.

4. The manner, in which, the respondent completed the assessments in so far as the year 2015-16 is concerned is contrary to the law laid down by this Court in the case of JKM Graphics Solutions Private Limited Vs. CTO, Vepery Assessment Circle [reported in (2017) 99 VST 343]. So far as the assessment year 2014-15 is concerned, even as per the relevant impugned assessment order, the dealer had shown that the turnover is below the threshold limit. It has to be seen as to whether the respondent was justified in adding 50% of the probable omission. In any event, the respondent could not have completed assessment without affording an opportunity of personal hearing, which is mandatory. Hence, this Court is inclined to remand the matters for a fresh consideration.

5. Accordingly, the writ petitions are disposed of directing the petitioner to treat the impugned proceedings as show cause notices and file their further objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall afford an opportunity of personal hearing, conduct an enquiry into the matter and take a fresh decision on merits and in accordance with law without, in any manner, influenced by the findings recorded in the impugned proceedings. Till the above exercise is completed, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To
The Deputy State Tax Officer, Thirukazhukundram Assessment Circle, No.42, Wahab Nagar, Thirukazhukundram-603109.

+2cc to M/S.S.Ramanan, Advocate Sr.47269, 47270
+1cc to the Special Government Pleader Sr.48134

WP.Nos.18174 & 18175 of 2018&
WMP.Nos.21477 & 21478 of 2018

srg 1/8/2018