IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.2493 & 2494 of 2012
and M.P.No.1 of 2012

Royal Trading Company,
No.9, (New No.27),
Park Road, Erode-3. ... Petitioner in both W.Ps.

Vs.

1.The Assistant Commissioner (CT),
Park Road Assessment Circle, Erode.

2.The Joint Commissioner (CT),
Salem Division, Salem. ... Respondents in both W.Ps.

Prayer in W.P.No.2493 of 2012 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, to call for the records of the impugned notice in NK2713/97/A3, dated 01.11.2011 on the files of the first respondent herein, quash the same.

Prayer in W.P.No.2493 of 2012 : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus, to direct the second respondent herein to issue the Certificate of Settlement of Arrears in Form V under Section 8 (1) of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008 (Ordinance 7 of 2008) read with Rule 5 (1) of the Tamil Nadu Sales Tax (Settlement of Arrears) Rules, 2008, for TNGST assessment year 2003-04.

For Petitioner : M/s.Aparna Nandakumar

For Respondents : Mr.M.Hariharan,
Additional Government Pleader

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C O M M O N   O R D E R

Heard M/s.Aparna Nandakumar, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader for the respondents.

2.The petitioner is aggrieved by a notice issued by the first respondent dated 01.11.2011, by which the first respondent has intimated the petitioner that the petitioner has to pay interest of Rs.2,65,136/- so as to enable the first respondent to entertain the application for settlement under the provisions of the Tamil Nadu Sales Tax (Settlement of Arrears) Ordinance, 2008 (hereinafter referred to as "the Act"). Unfortunately, the first respondent while issuing the impugned notice did not assign any reason as to how the computation given by the petitioner and the payment of tax made by the petitioner is incorrect. The procedure under Section 7 of the Act has not been adhered to while determining the amount payable. No opportunity was given to the petitioner to state as to how the amount computed by them is not just and proper.

3.Learned counsel for the petitioner placed reliance on the decision of this Court in the case of Batliboi and Co. Ltd., (Now known as Batliboi Ltd.) v. Joint Commissioner (CT) and another reported in [2011] 28 VST 465 (Mad.).

4.As pointed out earlier, the impugned communication is bereft of particulars and the petitioner is unaware as to how the demand has been made. Thus, the first respondent having issued the impugned communication in utter disregard to the procedure under the Act, the same calls for interference.

5.Accordingly, Writ Petition No.2493 of 2012 is allowed and the impugned communication is set aside and consequently, Writ Petition No.2494 of 2012 stands disposed of by directing the second respondent to take on file the petition filed by the petitioner for issue of certificate of settlement of arrears, afford an opportunity of personal hearing and pass fresh orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Assistant Commissioner (CT),
Park Road Assessment Circle, Erode.

2.The Joint Commissioner (CT),
Salem Division, Salem.

+1cc to Mr.APARNA NANDAKUMAR, Advocate, S.R.No. 4370
+1cc to the Government Pleader, S.R.No.4934 & 4370

W.P.Nos.2493 & 2494 of 2012

VG II(CO)
TR(14/02/2018)