IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.06.2018

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.26171 of 2013 &
M.P.Nos.1 & 2 of 2013

Tvl. Next Retail India Ltd.
50, Söuth Usman Road
T.Nagar, Chennai - 600 017.

.. Petitioner

v.

The Assistant Commissioner (CT)
T. Nagar South Assessment Circle
Chennai

.. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN 33251542351/2010-2011, dated 28.06.2013 and quash the same as illegal and unconstitutional and to direct the respondent to summon and cross verify the third parties concerned to verify the books of accounts pertaining to the sales of the third party dealers by following the decision reported in 142 STC 130.

For Petitioner : Mr.R.Ganesh Kanna

For Respondent : Ms.G.Dhanamadhri,
Government Advocate

ORDER

Heard Mr.R.Ganesh Kanna, learned counsel appearing for the petitioner and Ms.G.Dhanamadhri, learned Government Advocate, appearing for the respondents.

2. The petitioner is aggrieved by an order of assessment dated 28.06.2013 under the provisions of the Tamil Nadu Value Added Tax Act, 2006, for the assessment year 2010-2011.

3.Two issues arise in the matter, viz., (1) there is purchase suppression alleging that the petitioner has not disclosed certain purchases which have been effected from M/s.Godrej and Boyee Manufacturing Company Limited and M/s.Mire Electronics Limited; (2) there is allegation that the petitioner has availed Input Tax Credit on the ground that they have effected local purchases from M/s. Everest Agencies and on cross verification of Annexure-2, filed by the said M/s. Everest Agencies it was found that there was no such sales effected by them.

4. The petitioner submitted their reply dated 20.02.2012, produced all the records and stated that there is no purchase suppression/omission and they disclosed the transaction done with the said companies and also mentioned the invoice numbers and other details. Further, with regard to other allegation that no sales were effected from M/s. Everest Agencies, the petitioner stated in their objection that due to oversight they mentioned incorrect name of the dealer and the correct name of the dealer is M/s.IFB Industries. The petitioner also furnished the TIN number of the said dealer.

5. The respondent ought to have afforded an opportunity to the petitioner to substantiate their plea, for which purpose the other end dealers, who have filed returns and alleged that they have effected sales to the petitioner and have been made available to the petitioner and if there is serious doubts regarding the transaction, cross examination should have been permitted. With regard to the other issue, the petitioner themselves have accepted that they have wrongly mentioned the name of the dealer and wanted to mention the correct name by giving correct TIN number. This fact could have been accepted by the respondent, but, took a perverted view stating that the petitioner should have filed revised return.

6. When the respondent has issued notice dated 31.01.2012 proposing to reverse the wrong claim and levy interest on balance of tax due, the respondent could have given an opportunity to the petitioner to substantiate his case. Having not done so, the impugned order cannot be sustained.

6. For the above reasons, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration. The respondent shall furnish all the relevant records of the other 1end dealers, viz., M/s.Godrej and Boyee Manufacturing Company Limited and M/s.Mire Electronics Limited to the petitioner and make available the relevant person for the purpose of cross examination. Further, the respondent is directed to accept the stand taken by the petitioner that they have effected purchase

from M/s.IFB Industries only after verifying the said contention and redo the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Rj

To

The Assistant Commissioner (CT)
T. Nagar South Assessment Circle
Chennai

+1cc to Special Government Pleader(Taxes), in sr.no.35961

W.P.No.26171 of 2013 &
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ssi(co)
nr 22/06/2018