IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2018

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THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.29484 of 2007 &
M.P. No.1 of 2007

TVL. Project and Equipments,
Corporation of India Ltd.,
(A Government of India Enterprises (PEC. Ltd.),
No.143, Greams Road, Chennai - 600 006. ..Petitioner

vs.

The Commercial Tax Officer,
Egmore-II Assessment Circle,
89, Mayor Ramanathan Salai,
Chennai - 600 031. ..Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records in CST 635597/2000-01, dated 18.07.07 on the file of the respondent and quash the same as illegal and against the principles of natural justice and also without evidence.

For Petitioner : Mr.A.Thiyagarajan

For Respondent : Mr.Venkatesh,
Government Advocate

O R D E R

Heard A.Thiyagarajan, learned counsel for the petitioner and Mr.Venkatesh, learned Government Advocate appearing on behalf of the respondent.

2. The petitioner is a Government of India Company carrying on business in Gold, Silver bullion, Iron and Steel etc. In this writ petition, the petitioner is aggrieved by an assessment order passed by the respondent dated 18.07.2007 under the provisions of Central Sales Tax Act, 1956 for the Assessment Year 2000-01. For the said Assessment Year, the petitioner was initially assessed and an order was passed on 17.04.2002 by accepting the petitioner's claim for exemption, after perusing

the copies of Invoices, High Sea Sales Agreement, Bill of Lading and Bill of Entry.

3. After about four years, the respondent issued a notice dated 30.03.2006, stating that the petitioner's transaction with two dealers, namely, M/s.Vinayaka Alloys Limited and M/s.Kannappan Company Private Limited and M/s.Vinayaka Alloys Limited is an assessee on the books of the Deputy Commercial Tax Officer, Ponneri Assessment Circle and M/s.Kannappan Company Private Limited is not a registered dealer in Tamil Nadu but registered dealer in Pondicherry State.

4. The respondent sought clarification from the petitioner with reference to the records of the High Sea sales effected for the turnover mentioned therein. The petitioner submitted a reply dated 19.04.2006. While the reply was pending consideration, second notice dated 02.02.2007 was issued. Wherein, apart from the two dealers whose names mentioned in the notice dated 30.03.2006, three more names were mentioned and it was alleged that the petitioner has not accounted for the transactions with those dealers.

5. The petitioner submitted his reply on 30.03.2007, furnished all details stating that the genuineness of High Sea Sales transaction had never been doubted and all the conditions stipulated in Section 5(2) of the Central Sales Tax Act have been satisfied. Further, it is stated that any omission and commission of the parties could not be construed as a valid reason which was rightly granted to the petitioner. It was followed by another reply dated 09.04.2007, wherein the petitioner referred to various decisions and also relied upon the proceedings initiated before the Customs and Central Excise Settlement Commission, wherein the transaction pertaining to High Sea Sales has been admitted and liability towards Customs Duty was also admitted. In spite of placing all these records, the respondent without affording an opportunity of personal hearing, has doubted the very genuineness of the High Sea Sales transaction and confirmed the proposal notice and passed the impugned assessment order.

6. In the counter affidavit, the assessment order has been reiterated and it is stated that all the transaction are not genuine but actually interstate sales for which has been camouflaged as High Sea sales.

7. However to establish the same, the respondent should have sufficient material to confront the petitioner so as to deny the benefit of exemption. If that material was available with the respondent, it should be made known to the dealer so that the dealer would be in a position to to effectively defend.

If the respondent has recorded any statement from third parties, then those statements should be provided to the petitioner and on verification, it was found that the transactions were not genuine High Sea Sale transactions. The nature of verification done on the documents which are in possession of the respondent has not been disclosed. Thus, it is clear that the impugned assessment order has been passed in total violation of the Principles of Natural Justice.

8. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh decision. The respondent is directed to disclose fully all the materials which they have collected from various agencies or authorities based on which, the notices dated 13.01.2006, 02.02.2007 and 16.03.2007 were issued and on receipt of all those documents, the petitioner is entitled to submit a comprehensive reply, after which, an opportunity of personal hearing to the authorised representative of the petitioner be granted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS V)

//True copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Egmore-II Assessment Circle,
89, Mayor Ramanathan Salai,
Chennai - 600 031.

+1cc to Mr.A.Thiyagarajan, Advocate SR.No.788
+1cc to Special Government(Taxes) Pleader SR.No.1181

W.P.No.29484 of 2007

SKV(CO)
GN(23/01/2018)