IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.35399 of 2006 & M.P.Nos.1 & 2 of 2006

M/s.Elango Textiles,
3, Kurunji Nagar, 3rd Street,
Tirupur. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Bazaar Circle, Tirupur. ... 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 impugned proceedings of the respondent in TNGST/2421321/2002-2003 on his files, and quash the order dated 12.06.2006 passed therein in as much the same has been passed without granting an opportunity of cross-examination of the persons on whose statements, the respondent has relied and passed the impugned order.

For Petitioner : Mrs.Hema Muralikrishnan

For Respondent : Mrs.G.Dhanamadhri,
Government Advocate

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O R D E R

Heard Mrs.Hema Muralikrishnan, learned counsel for the petitioner and Mrs.G.Dhanamadhri, learned Government Advocate for the respondent.

2.The petitioner, who is a registered dealer on the file of the respondent has challenged an order of assessment passed by the respondent under the provisions the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as “the TNGST Act”). The impugned assessment is a reassessment of the petitioner’s total and taxable turnover. The reason for reassessing the turnover is on the ground that the petitioner is alleged to have made transactions with bogus dealers, whose registration certificates have been cancelled. The petitioner submitted an elaborate objection stating that all those dealers are active dealers and their registration certificates are valid and has been renewed. To support their stand, they produced registration certificates of those dealers, ledger folio, petitioner’s Bank statement, buyer/seller's Bank statement, renewal fee paid and receipts issued in respect of those third parties. Apart from that on merits also, the petitioner objected to the revision of assessment. Though the impugned order appears to be a very elaborate order, the discussion is only from paragraph 14 onwards.

3.The sum and substance of the stand taken by the respondent in the impugned assessment order is that, since the petitioner has produced xerox copies of the registration certificates of the other end dealers, fee payment receipts etc., it is quite possible for them to produce the buyers and sellers for cross examination before the assessing officer, if they are genuine dealers. Unfortunately, the assessing officer missed out the legal position whether the onus is on the Department to prove that the transactions were bogus or that the petitioner had transactions with dealers, whose registration certificates were cancelled. It is only after the discharge of the burden cast on the Department is satisfactorily proved, then alone the burden shifts on the dealer to prove contrary. Thus, without affording an opportunity to cross examine those dealers, by merely stating that Departmental record shows that the registration certificate is cancelled will not suffice, that too, when the respondent exercises his power of reassessment on the total and taxable turnover.

4.Thus, for the above reasons, it is held that the impugned revision of assessment is not sustainable and the reasons given by the assessing officer for not permitting cross examination is also not sustainable.

5.Learned counsel for the petitioner relied upon an order passed in W.P.No.1365 of 2006 in the case of M/s.Doshi Steels v. Commercial Tax Officer dated 02.02.2006, wherein under somewhat similar circumstances, the Court set aside the assessment order and remanded the matter back to the assessing officer for fresh consideration with a direction to give opportunity to the dealers to cross examine the witnesses, whose statements are relied upon by the Department.

6.Thus, for the above reasons, this writ petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, who shall issue summons to the third party dealers and on their appearance before the respondent, permit the respondent to cross examine those dealers after which the petitioner should be granted minimum of fifteen days time to submit their objections and on receipt of the objections, the assessing officer shall re-do the assessment after affording an opportunity of personal hearing to the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

abr

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

To

The Deputy Commercial Tax Officer,
Bazaar Circle, Tirupur.

+1CC to M/S.B.RAVENDRA Advocate SR.NO.5669
+1CC to SPL GOVT PLEADER SR.NO.6114

W.P.No.35399 of 2006

MK:20/02/2018