IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.29003 of 2018

W.M.P.No. 33906 of 2018

Mahaveer Marketing,
Represented by its Proprietor
Mahendra Mehta (M/52)
287, K.G.Street, Coimbatore - 641 001.
...Petitioner

vs.

The Assistant Commissioners (ST) (FAC)
R.G. Street Circle, Coimbatore. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari calling for the records on the files of the respondent herein in Ref: TIN 33591862167/2015-16 dated 24.04.2018 and to quash the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mrs.G.Dhana Madhri
Government Advocate (Tax)

O R D E R

Mrs.G.Dhana Madhri, learned Government Advocate (Tax) takes notice for the respondent. By consent of the parties, the main writ petition is taken up for final disposal at the admission stage itself.

2. The petitioner is aggrieved against the order of assessment dated 24.04.2018 passed in respect of assessment year 2015-2016.

3. Heard both sides.

4. Though the impugned assessment order was passed based on four issues viz., Stock difference, Reversal of ITC under Section 19(15) of the TNVAT Act, 2006, Sales not reported to the Department, Sales Return not eligible, the learned counsel for

the petitioner submitted that the petitioner is confining the challenge only with regard to the first issue viz., Stock Difference. In other words, the petitioner is not aggrieved against the assessment insofar as other three issues are concerned.

5. The learned counsel for the petitioner submitted that first of all the inspection conducted by the Officials of the Enforcement Wing on 15.12.2015, during the middle of the financial year and the report filed by the said officials complaining stock difference, cannot be the reason for passing the impugned order of assessment since such stock difference cannot be finalised during the middle of the financial year. Further, he submitted that even though a notice of proposal was issued, the petitioner specifically made their reply and requested for furnishing details of goods in respect of variation in stock which was stated to have been noticed and the said request was not complied with by the Assessing Officer. Therefore, he submitted that the assessment order passed without furnishing those details violates the principles of natural justice.

6. On the other hand, the learned Government Advocate submitted that the entire order of assessment was passed after giving due opportunity of hearing to the petitioner including personal hearing. She further submitted that when the petitioner has not come with relevant documents during personal hearing, the Assessing Officer cannot be faulted in passing the impugned order in the absence of any other materials placed by the petitioner.

7. The only dispute between the parties is in respect of stock difference. It is seen that the notice of proposal was issued to the petitioner on 25.01.2018 and after receipt of such notice, the petitioner sent a reply on 20.02.2018, asking the Assessing Officer to furnish the details of goods in respect of which variations of stocks stated to have been noticed.

8. Perusal of the impugned order would show that no such details were furnished to the petitioner at the time of personal hearing only on the reason that the petitioner came to the office without any books of accounts. Further, it is seen that the Assessing Officer has concluded the assessment based on the report filed by the Enforcement Officials. Thus, it is evident that independent application of mind by the Assessing Officer in respect of the subject matter dispute is apparent on the face of the order. Therefore, I am of the view that the matter can go back to the Assessing Officer only to reconsider the disputed issue viz., Stock difference, after giving one more personal hearing with the petitioner. However, such indulgence can be shown to the petitioner only by putting them on some terms,

since the Assessing Officer has not only issued a notice of proposal, but also afforded an opportunity of personal hearing to the petitioner, during which time the petitioner did not produce any documents.

9. Accordingly, this writ petition is allowed in part and the impugned order of assessment is set aside only insofar as the issue viz., Stock difference is concerned under the following terms & conditions:

(a) The petitioner shall pay 25% of the tax liability in respect of the disputed issue viz., Stock Difference and to pay the entire liability in respect of the other issues within a period of two weeks from the date of receipt of a copy of this order.

(b) The petitioner shall furnish all necessary documents in support of their claim and the Assessing Officer shall also furnish necessary details as sought for by the petitioner in their reply to the notice of proposal.

(c) The Assessing Officer shall pass fresh orders on merits and in accordance of law, after giving due opportunity of hearing to the petitioner, within a period of eight weeks thereafter.

(d) It is made clear that this Court is not expressing any view on the merits of the matter.

No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioners (ST) (FAC)
R.G. Street Circle,
Coimbatore.

+1cc to M/s.N.Inbarajan, Advocate sr.75109
+1cc to the special Government Pleader sr.76191

W.P.No.29003 of 2018

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srg 30/11/2018