IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

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THE HONOURABLE MR.JUSTICE M.SUNDAR

W.P.NO.24147 OF 2019
AND W.M.P.NO.23938 OF 2019

Tvl.Sreeram Engineering Works
Represented by its Managing Partner V.Deenathayalan
18-C, Athipalayam Road, Near GKD School
Periyanaickempalayam
Coimbatore - 641 020
.. Petitioner

vs.

1. The State Tax Officer
Thudiyalur Assessment Circle
Coimbatore

2. The Deputy Commissioner (CT) Enforcement
Coimbatore

3. The Commercial Tax Officer
Group VII, Enforcement
Coimbatore
.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the first respondent in TIN 33842026396/2016-17 dated 28.06.2019 and to quash the same.

For Petitioner : Mr.D.Naveena

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader.



ORDER

Ms.D.Naveena, learned counsel on record for writ petitioner and Mr.Mohammed Shaffiq, learned Special Government Pleader, who has accepted notice on behalf of all the three respondents, are before this Court.

2. With consent of learned counsel on both sides,

main writ petition is taken up, heard out and is being disposed of.

3.Short facts shorn of micro details/particulars are that writ petitioner is a dealer under 'Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006)', which shall hereinafter be referred to as 'TNVAT Act' for brevity, that the business premises of the writ petitioner dealer was inspected by the officials of the Enforcement Wing of the Tax Department on 17.10.2016, that during the surprise inspection, the Enforcement Wing officials found inter alia in the books of accounts of the writ petitioner dealer what according to the Enforcement Officers are discrepancies, that based on what according to the Enforcement Wing officers are discrepancies, VSI-3A proposals were made by Enforcement Wing officers, that pursuant to such proposals given by Enforcement Wing officials, the first respondent in this writ petition, who is the Assessing officer, embarked upon the exercise of making a revised assessment for the 'Assessment Year 2016-17' ('said AY' for brevity), passed a 'revised Assessment order dated 28.06.2019 bearing reference TIN 33842026396/2016-17' (hereinafter 'impugned order' for brevity) and instant writ petition has been filed assailing the impugned order primarily on the ground that only one of the two revisional notices referred to in the impugned order have been received by writ petitioner and in any event, the impugned order has proceeded on the basis that writ petitioner dealer has not filed objections though the writ petitioner has sent objections/reply to the received revisional notice under due acknowledgement.

4. Before this Court proceeds further, it is deemed appropriate to mention that this Court is informed that 'VSI' stands for VAT Surprise Inspection and 3A denotes the relevant Form number. Further, impugned order does not mention the provision of law under which it has been made and this Court is informed by learned Revenue counsel that the impugned order has been made under Section 27(1)(a) of TNVAT Act.

5. This takes us to the grounds on which impugned order has been assailed by the writ petitioner dealer in the instant writ petition. Learned counsel for writ petitioner, adverting to the impugned order, drew the attention of this Court to one Paragraph in the impugned order which reads as follows:

> 'A Notice was issued on 11.02.2019 and 05.04.2019 to the dealers calling for their objections. The dealers have not filed their objections till date. Therefore, the turnover proposed in the notice is confirmed. '

6. Referring to the aforesaid portion of the impugned order, learned counsel for writ petitioner submitted that the impugned order has been passed on the basis that two revisional notices viz., one dated 11.02.2019 and another dated 05.04.2019 are said to have been sent calling for objections and that the writ petitioner has not filed any objections till the date of the impugned order for both. Learned counsel for writ petitioner submitted that revisional notice dated 05.04.2019 referred to in the impugned order was never received by the writ petitioner/dealer. However, revisional notice dated 11.02.2019 was received by the writ petitioner dealer and a reply/objections dated 28.02.2019 was sent and the postal acknowledgement card reveals that the reply to the revisional notice has been received on 08.03.2019.

7. This takes us to Section 27(1)(a) of TNVAT Act under which the impugned order has been made. The common proviso to Sub-sections (1) and (2) of Section 27 makes it statutorily imperative that the Assessing Officer has to give a reasonable opportunity to show-cause against a revised Assessment Order. In the instant case, revisional notice dated 11.02.2019 has no doubt been sent to the writ petitioner, but the impugned order has been passed on the basis that the writ petitioner has not sent any reply to this notice though the reply/objection has been sent under due acknowledgement and reply /objections has been received by the office of the first respondent on 08.03.2019. Therefore, it is clear that impugned order proceeds on the basis that the writ petitioner / dealer has not shown cause though two revisional notices have been sent.

8. Learned Revenue Counsel, who has accepted notice on behalf of all the respondents, adverting to the writ petitioner dealer's reply submits that it is cryptic and it also asks for supply of certain documents such as inventory, stocking report etc.,

9. In the considered opinion of this Court, this does not help the Revenue counsel in defending the impugned order as the impugned order, as mentioned supra, proceeds on the basis that the writ petitioner dealer has not responded at all.

10. Be that as it may, with regard to reasonable opportunity which the Assessing officer has to give to a dealer before passing a revised Assessment Order, in the instant case, notwithstanding the revisional notice dated 11.02.2019, first respondent/Assessing Officer in his discretion and wisdom has thought it necessary to send one more revisional notice on 05.04.2019. Therefore, it is only proper that 05.04.2019 revisional notice is also now served on the writ petitioner/dealer.

11. In the light of the narrative thus far, the following order is passed:

a) Impugned order dated 28.06.2019 bearing reference TIN 33842026396/2016-17 is set aside. It is made clear that impugned order is set aside solely on the ground that it has been passed on the erroneous basis that writ petitioner/dealer has not sent any reply/objections to the revisional notices, whereas the writ petitioner has actually received one of the revisional notices and has sent reply /objections under due acknowledgement. In other words, it is made clear that no opinion or view is expressed by this Court on the merits of the matter.

b) The first respondent shall now resend the second revisional notice dated 05.04.2019 to the writ petitioner dealer under due acknowledgement within a fortnight from the date of receipt of a copy of this order.

c) It is also open to the first respondent to respond to the request of the writ petitioner vide writ petitioner's reply dated 28.02.2019 being reply to first revisional notice dated 11.02.2019. This shall also be done within a fortnight from the date of receipt of a copy of this order.

d) Writ petitioner shall be given a fortnight's time therefrom to respond to 05.04.2019 notice, i.e., second revisional notice.

e) Thereafter, first respondent shall redo the revised Assessment and pass a revised Assessment Order afresh within six weeks therefrom.

f) The redone revised Assessment Order passed in the aforesaid manner shall be communicated to the writ petitioner dealer under due acknowledgement in accordance with the Rules under TNVAT Act in this regard.

This Writ petition is disposed of with the above directions. No costs. Consequently, connected miscellaneous petition is closed.



Sd/-
Assistant Registrar(CS III)



//True Copy//

Sub Assistant Registrar

gpa

To

1. The State Tax Officer
   Thudiyalur Assessment Circle
   Coimbatore

2. The Deputy Commissioner (CT) Enforcement
   Coimbatore

3. The Commercial Tax Officer
   Group VII, Enforcement
   Coimbatore

+1cc to Mr.S.Durairaj, Advocate, S.R.No.70006
+1cc to the Special Government Pleader(T), S.R.No.70981

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PPA(CO)
CS/19/09/2019