IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2019

CORAM :

THE HONOURABLE DR. JUSTICE ANITA SUMANTH

W.P.No.31035 of 2018
and
W.M.P.No.36213 of 2018

M/s.Fives India Engineering & Projects Pvt. Ltd.,
Represented by its Vice President - Finance (M/52),
No.88, Level-6, Anmol Palani Builders,
G.N.Chetty Road, T.Nagar,
Chennai 600 017. ... Petitioner

Vs.

The State Tax Officer,
Pondy Bazaar Assessment Circle,
No.48, Pasumpon Muthuramalingadevar Salai,
Chennai 600 028. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the Respondent in the impugned order in TIN No.33631523130/2011-12 dated 21.08.2018 quash the same to the extent pertaining to purchase omission as it is violating the principles of natural justice and also being contrary to the ratio of the decision of this Court in M/s.JKM Graphics Solutions Private Limited & Others Vs. Commercial Tax Officer (2017) 99 VST 343 and to direct the respondent to pass order afresh after providing an opportunity of personal hearing.

For Petitioner : Mr.Radhika Chandra Sekhar

For Respondents: Mr.M.Hariharan
Additional Government Pleader (Taxes)

ORDER

The petitioner challenges order of assessment dated 21.08.2018 passed by the Sales Tax Officer, Pondy Bazar Assessment Circle for the year 2011-2012.

2.Ms.Radhika Chandra Sekhar, learned counsel appearing for the petitioner states that the impugned order has been passed without appreciation of the materials placed for consideration of the assessing officer and is in gross violation of the principles of natural justice.

3. Mr.Hariharan, learned standing counsel has filed a detailed counter denying all the averments in the Writ Petition and also pointing out that the impugned order is an appealable order under Section 51 of the TNVAT Act.

4. The place of business of the assessee was subject to an audit by the Enforcement Wing officials on various dates in February, March, April and June 2017 and various discrepancies are stated to have been found in the records maintained. Based on the report of the enforcement officers, a proposal was issued by the sole respondent/Assessing Officer, calling for an explanation from the assessee, on alleged estimated sales suppression based on the purchase suppression as per Annexure II other dealers, alleged sales suppression based on purchases reported by other dealers in Annexure I and reversal of Input tax credit claim based on cross verification of Annexure I of the petitioners' return and Annexure II of the other dealers.

5.The petitioner filed a detailed objection to the notice received on 27.11.2017, inter alia offering an explanation for the alleged discrepancies. The objection was accompanied by a detailed tabulation of the sales and purchases as per its records and a reconciliation of the same with the details furnished by the Assessing Officer relating to third party dealers.

6.According to the learned counsel for the petitioner, several of the details that had been furnished in the Annexures have been omitted to be taken into account by the Assessing Officer in finalizing the assessment. The respondent, while granting part relief has brought to tax a sum of Rs.18,07,055/- adding gross profit of 13.22%, in all a sum of Rs.20,45,948/-.

7. Ms.Radhika argues that the aforesaid addition is wholly incorrect insofar as a portion of the turnover added does not relate to the petitioner at all. Moreover, she complains of violation of the principles of natural justice and a perusal of the impugned order does reveal that no personal hearing has been afforded.

8. The requirement of personal hearing, according to me, is part and parcel of a fair and reasonable hearing. In the present case, though the petitioner has been afforded opportunity, the benefit of a personal hearing was not granted which could perhaps, have, facilitated the presentation to, and appreciation of all factual aspects of the matter by the Assessing Officer. It was left to the Assessing Officer to

effect a reconciliation himself, in the course of which errors have been occasioned. In this view of the matter, I am inclined to set aside the present assessment and direct the Assessing Officer to re-do the same after hearing the petitioner. The petitioner shall appear before the Assessing Officer on 07.03.2019 at 10.30. am and a fresh assessment order shall be passed by the respondent within a period of three weeks from the date of conclusion of personal hearing.

10.The Writ Petition is allowed in the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sai/sl

To
The State Tax Officer,
Pondy Bazaar Assessment Circle,
No.48, Pasumpon Muthuramalingadevar Salai,
Chennai 600 028.

+1cc to Mr.K.Vaitheeswaran, Advocate SR.No.17845

+1cc to Special Government Pleader SR.No.17122

W.P.No.31035 of 2018

SSI(CO)
GMY(04/03/2019)