IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :29.10.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.23824 of 2015
and M.P.Nos.1 & 2of 2015

M/s. AJK Safety Engineering [Petitioner]
Represented by its Partner
Mr. M.Jayakumar
No.153 Aravindar Street
Puducherry-605001.

Vs

1 The Commercial Tax Officer-I
Second Floor 100 Feet Road
Ellapillaichavadi Puducherry-605005.

2 The Appellate Assistant Commissioner (CT)
Commercial Taxes Department
Third Floor 100 Feet Road
Ellapillaichavadi Puducherry-605005.

[Respondents]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the records of the case from the files of the first and second respondent herein quash the impugned ex-parte order of assessment in CST/ 34230017069/2013-14 dated 24.10.2014 for assessment year CST/2013-14 passed by the first respondent and consequent order of the second respondent in Ref.No. 204/APRR/ 2015-16/AAC dated 29.06.2015 and direct the 1st respondent to issue the pre-assessment notice and grant opportunity of personal hearing.

For Petitioner : Mr.R.Sivaraman
For Respondent : Ms.N.Mala, AGP(P)

ORDER

Heard the learned counsel for the petitioner and Ms.N.Mala, learned Additional Government Pleader (Puducherry) for the respondents and with their consent, the main writ petition is taken up for disposal.

2. This writ petition is filed challenging the order of the 1st respondent dated 24.10.2014 for assessment year in CST/2013-14 and the consequential order of the 2nd respondent dated 29.06.2015 and to direct the 1st respondent to issue the pre-assessment notice and grant opportunity of personal hearing.

3. According to the learned counsel for the petitioner, the petitioner, being a registered dealer under the provisions of the Puducherry Value Added Tax Act, 2007 and Central Sales Tax Act, 1956, and an assessee on the files of the 1st respondent, is trading in safety equipments. It is the submission of the learned counsel for the petitioner that the petitioner had effected interstate sales against C Forms for claiming concessional rate of tax and had also effected local sales for the assessment year CST 2013-14. The petitioner had been filing its monthly returns in time under the Central Act. It is the further submission of the learned counsel for the petitioner that assessment

proceedings for the assessment year CST 2012-13 is yet to be completed by the 1st respondent. However, an ex parte order of assessment dated 24.10.2014 served by ordinary post on 26.10.2014 for the assessment year CST 2013-14 was straight away passed by the 1st respondent, without issuing any pre-assessment notice calling for objections.

4. That apart, according to the learned counsel for the petitioner, the partner of the petitioner Company, who has been managing and maintaining all accounts and sales tax matters, due to his ill health for a period of six months from December 2014, was unable to look after the business till June 2015 and hence after resuming to work regularly, he immediately filed an appeal before the 2nd respondent with a delay of 186 days by contending that pre-assessment notice itself was not issued before passing the assessment order and also stating the reason of his ill health, prayed for setting aside the ex parte order of assessment. Further, according to him, the petitioner is having all C Forms and filed along with the appeal amounting to Rs.13,41,583/- for claiming concessional rate of tax which was arrived by the 1st respondent on 24.10.2014 as taxable turnover in the ex-parte assessment order and he would further urge that if the forms were to be considered, the total taxable turnover comes to nil.

5. Besides, according to the learned counsel for the petitioner, without considering the sufficient cause and submissions raised in the appeal, the 2nd respondent, dismissed the appeal on 29.06.2015 stating the reason of delay and hence he has no jurisdiction to entertain the appeal. According to him, when the petitioner tried to apply for statutory C forms online in the month of May, it was found that the access was blocked with the caption of "you have arrears" against demand No.1007006 for the amount of Rs.1,43,699/- and the status remains the same as on date and hence the petitioner is unable to obtain the statutory C Forms online.

6. The learned Counsel for the petitioner would submit that the impugned ex parte assessment order passed by the 1st respondent is ex facie illegal, erroneous in law and violative of principles of natural justice, since the same has been passed without issuing pre-assessment notice. Hence, the same is liable to be quashed.

7. The learned Additional Government Pleader (Taxes) relying on the counter affidavit submitted that a pre-assessment notice dated 12.08.2014 has been issued for the assessment year 2013-14, wherein the petitioner has been instructed to pay the balance tax amount of Rs.1,64,229/-, by granting time upto 19.08.2014 to file objections if any.

Hence, the submission of the learned counsel for the petitioner that no pre-assessment notice was issued is not correct. She would further submit that the petitioner has not utilized the opportunity granted by the respondent either to furnish the statutory forms or to seek extension of time for furnishing the statutory forms and hence the respondent has discharged his duties by confirming the proposition in the pre-assessment notice and issued final assessment order on 24.10.2014. Further, She would submit that since the appeal has been filed belatedly, the 2nd respondent has rightly rejected the appeal.

8. At this juncture, it is the contention of the learned counsel for the petitioner that no pre-assessment notice was served on the petitioner. In reply, the learned Additional Government Pleader submitted that the said notice was despatched by post on 12.08.2014 itself.

9. The learned counsel for the petitioner also invited the attention of this Court to the decision rendered by this Court in similar circumstances in W.P.No.13846 of 2015, wherein this Court has held as follows:-

> *"3. Admittedly, the petitioner filed an appeal challenging the assessment order before the authority concerned, but, beyond the limitation period of 60 days. The mandatory pre-*

deposit amount was also paid. Stating that the appeal is barred by limitation, the same was returned and hence, without any other remedy, the petitioner challenges the impugned order of assessment before this Court.

4. The one and only ground to be considered is violation of principles of natural justice. The authority, without affording sufficient opportunity to the petitioner, passed the impugned order, despite specific request made by the petitioner on those lines. Originally, the assessment was completed on 31.10.2012, accepting the returns filed by the petitioner under Section 22(2) of the TNVAT Act. The said assessment was sought to be re-opened by the authority under Section 27 of the TNVAT Act, for escapement of assessment on the basis of the report filed by the Enforcement Wing authorities, which resulted in disallowance of sales return as well as reversal of ITC, which according to the learned counsel for the petitioner is not justifiable and the petitioner is entitled for the same. Apparently, without providing a reasonable opportunity to the petitioner of being heard the impugned order came to be passed. On this score itself, the impugned order is liable to be set aside.

> *5. In the result, the impugned order passed by the 1st respondent in TIN/33521344565/2011-12 dated 27.6.2014 is set aside and the matter is remitted back to the assessing authority for fresh consideration. The petitioner shall file necessary objections along with all the documentary evidences, within a period of two weeks from the date of receipt of a copy of this order and on such filing, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply any of the directions, it is open to the respondent to pass appropriate orders".*

10. As far as the present case is concerned, the petitioner herein has also paid the mandatory pre-deposit amount, however, stating that the appeal is barred by limitation, the same was rejected. The pre-deposit amount was not refunded to the petitioner is the contention of the learned counsel for the petitioner, which fact has not been disputed by the learned Additional Government Pleader.

11. At this point of time, the learned Additional Government Pleader fairly submitted that the 1st respondent may be directed to issue fresh notice and on receipt of the same, the petitioner may be directed to file their objections and on receipt of the same, the 1st respondent may be directed to consider the objections and pass appropriate orders within a time frame.

12. To give a quietus to this issue and in view of the submissions made by the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes), this Court is of the view that the impugned order passed by the 1st respondent dated 24.10.2014 is liable to be set aside and the matter has to be remitted back to the 1st respondent for passing fresh orders, after issuing fresh notice calling for objections from the petitioner.

13. In view of the same, by quashing the impugned order of the 1st respondent dated 24.10.2014, the matter is remitted back to the 1st respondent for passing orders afresh. The 1st respondent is directed to issue fresh notice within a period of two weeks from the date of receipt of a copy of this order and on receipt of such notice, the petitioner is directed to file their necessary objections along with documentary evidences and 'C' forms within a period of two weeks from the date of

receipt of such notice and on receipt of such objections, the 1st respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter, after providing due opportunity to the petitioner.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

29.10.2015

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To

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R.MAHADEVAN,J.

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