IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.04.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.13523 of 2015
And
M.P.No.1 of 2015

Tvl.Sun Oil Trade
represented by its Proprietor ... Petitioner

Vs.

The Assistant Commissioner (CT),
Surapattu Assessment Circle,
Chennai. ... Respondent

Prayer:
Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the respondent in CST 1050649/2013-14 dated 18.03.2015 and to quash the same as illegal, unconstitutional and to direct the respondent to pass fresh orders after verifying the books of accounts produced by the petitioner.

For Petitioner : Mr.A.Ravichandran

For Respondent : Mr.V.Haribabu
Additional Government Pleader (T)

ORDER

By consent of both the parties, the writ petition is disposed of, at the stage of admission itself.

2.This writ petition has been directed against the impugned proceeding of the Assistant Commissioner (CT), Surapattu Assessment Circle inter alia stating that the respondent had totally ignored to verify the documents filed by the petitioner on 10.03.2015 while issuing the impugned order. That apart she has wrongly mentioned that the petitioner although appeared and presented the document on 10.03.2015 had not availed the opportunity of personal hearing which is a deliberate lie.

3.Learned counsel appearing for the petitioner after drawing the notice of this Court in paragraph no.7 of the impugned order wherein, the Assessing Officer has found against the petitioner holding that when pre-assessment notice in CST No.1050649 dated 23.02.2015 calling for objections if any on the above proposal in writing with any connected records by 09.03.2015 and also appear for personal hearing on 10.03.2015 at 11.00 a.m., before the undersigned at her office, the dealers have not filed any objection nor appeared for personal hearing, again placing on record the acknowledgement with the endorsement made by the respondent receiving various documents on 10.03.2015, stated that when all the aforesaid documents have been filed before the respondent, sadly the respondent totally ignoring the same to verify the genuineness of the documents, wrongly issued the impugned order.

4.Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (T) who takes notice for the respondent.

5.After perusing the acknowledgement made by the office of the respondent on 10.03.2015, the respondent has no reply to defend the impugned order.

6.When the respondent issued Pre-Assessment Notice in CST 1050649/2013-14, dated 23.02.2015, proposing to reject the returns of the petitioner as incomplete and incorrect in order to assess the petitioner to the best of judgment with penalty under Section 22[4] of the TNVAT Act, along with Section 9(2-A) of the CST Act, detailed objections were filed by the petitioner with connected records on 09.03.2015. That apart, an opportunity of personal hearing was also granted to the petitioner on 10.03.2015. During the personal hearing, when the petitioner had submitted documents in support of his objections, the same also has been acknowledged by the respondent on 10.03.2015. Whileso, it is not known how the respondent can say in paragraph 7 of the impugned order that the dealers have not filed any objection nor appeared for personal hearing. Such attitude of the respondent glaringly depicts that he has not only failed to apply his mind as a quasi-judicial authority but also violated the order of this Court, therefore, the impugned order is liable to be set aside. A reading of the reply filed by the petitioner on 31.05.2014 shows that the check-post documents duly stamped by the Tamil Nadu check post have indicated that the goods had moved from Tamil Nadu to Kerala through the ongoing check post in Tamil Nadu and the goods entered Kerala through incoming check post at Kerala with document stamped by the Kerala check-post officers on being produced before the respondent for his verification had not been found mention in the impugned order. Besides, when the petitioner specifically pleaded in the reply that the said documents clearly proved that the goods have moved by way of stock transfer from Tamil Nadu to Kerala and he had paid Tax @ 1% by filing monthly returns along with other documents before the Kerala Authorities, the Assessing Authority ought to have conducted enquiry as held by this Court in M/s.Madras Granites (P) Ltd reported in 146 STC 642 to conduct enquiry under sub-section 2 of section 6A of CST Act. As the Assessing Officer failed to adhere to the said provision, in my considered view, the respondent is undoubtedly guilty of the dereliction of statutory duty cast on her by virtue of sub-section (2) of section 6A of the Central Sales Tax Act, 1956. Therefore, a cost of Rs.2,000/- is imposed on the respondent / the Assistant Commissioner (CT), Surapattu Assessment Circle, Chennai, to be paid by her from her salary to the Tamil Nadu State Legal Services Authority for passing erroneous order ignoring even the direction given by this Court. Accordingly, the respondent is directed to pay the said amount within a period of two weeks from the date of receipt of a copy of this order.

7.In fine, the writ petition is disposed of by setting aside the impugned order. The matter is remanded back to the first respondent for fresh hearing. Needless to mention that the respondent shall provide reasonable opportunity of personal hearing to the petitioner before passing the impugned order. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT),
Surapattu Assessment Circle,
Chennai.

+1cc to Mr.A.Ravichandran, Advocate, S.R.No.24192

W.P.No.13523 of 2015
And
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SAI(CO)
CA(04/06/2015)