IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.03.2015

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

Writ Petition No.32407 of 2014
and
M.P.Nos.1,2 of 2014

M/s. Mountain Springs
represented by its Proprietor Mr.Ramkumar Giri
No.19, Sasthri road
Ramnagar
Coimbatore-641 009 .. Petitioner

vs.

1.The Secretary
Tamilnadu Sales Tax Appellate Tribunal(AB)
Commercial Taxes complex
Dr.Balasundaram road
Coimbatore-18

2.The State of Tamilnadu
Rep by its Joint Commissioner (CT)
Commercial Taxes buildings
Dr.Balasundaram road
Coimbatore-18

3.The Commercial Tax Officer (CT)
now designated as Assistant Commissioner (CT)
Commercial Taxes buildings
Dr.Balasundaram road
Coimbatore-18 .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified mandamus to call for the records of the first respondent in CTMP.No.95 of 2008 in CTSA.No.205 of 2000 and C.O.P.No.101/00 dated 18.02.14 and the consequential order dated 15.02.08 in CTSA.No.205/2000 and C.O.P.No.101/00 and quash the same and further direct the first respondent to hear the appeal in CTSA.No.205/2000 and C.O.P.No.101/00 after affording the petitioner an adequate opportunity of being heard and thereafter pass order on merits and in accordance with law.

For Petitioner : Mr.V.Sundareswaran
For Respondents : Mr.Manoharan Sundaram,
Additional Government Pleader (T)

O R D E R

The petitioner has come forward with the present writ petition to call for the records of the first respondent in CTMP.No.95 of 2008 in CTSA.No.205 of 2000 and C.O.P.No.101/00 dated 18.02.14 and the consequential order dated 15.02.08 in CTSA.No.205/2000 and C.O.P.No.101/00 and quash the same and further direct the first respondent to hear the appeal in CTSA.No.205/2000 and C.O.P.No.101/00 after affording the petitioner an adequate opportunity of being heard.

2. Heard learned counsel for the petitioner and learned Additional Government Pleader.

3. Petitioner was a manufacturer and dealer in Bisleri water bottles. There was an enforcement wing inspection at the business premises of the petitioner on 05.11.1996. Pursuant to inspection D3 was formulated and directed to the followed in the assessment proceedings to include the freight charges in taxable turnover. Following the D3 report the assessing officer revised the assessments for the years 1992-93 to 1995-96 under the ACt, imposing sales tax on freight and insurance charges. In the second appeal filed by the petitioner before the first respondent in CTA.Nos.230-233 of 1988 vide order dated 11/01/99 the appeals were allowed. Pursuant to the said order of the Appellate Tribunal, the petitioner application dated 04/07/00 for refund of Rs.16,36,051/- was ordered by the third respondent. Third respondent was not aware of the order of the Appellate Tribunal in CTA.Nos.230-233/98 dated 11/01/99 an order was passed on 12/10/98 imposing sales tax on freight charges pursuan to the D3 report. As against the order of assessment dated 12/10/98 an appeal was filed before Appellate Assistant Commissioner was allowed vide order dated 14.10.99. The second respondent filed appeal before the Tribunal on 04.07.2000 stating that the petitioner had not produced proof that the price were fixed as ex-factory and that the freight charges collected were not reflected in the profit and loss account. The appeal was allowed by an ex-parte order without hearing the petitioner. Petitioner received the order on 29.02.2008 on receipt of it petitioner filed miscellaneous petition to restore the appeal to hear the petitioner and pass orders on merits. Petition was numbered as CTMP.No.95/08 in CTSA.No.205/2000 and was dismissed on 23.07.2013. Tribunal dismissed the petition ex-parte for the reason that sufficient opportunity was given to the petitioner in the CTSA.No.205/2000. Petitioner received the order on 21.08.2013. Petitioner again filed restoration petition on 11.09.2013 to hear the appeal on merits. However, without numbering the said petition, posted the same as Ref.No and declined to entertain the petition and dismissed the miscellaneous petition filed on 11.09.2013 in the very same CTMP.No.95/08 in CTSA.No.205/2000 by an order dated 18.02.2014. There against, the petitioner has filed this writ

petition.

4. The grievance of the petitioner is that no opportunity of hearing was given to the petitioner to put forth his case and prays that he may be heard and thereafter orders may be passed by the first respondent.

5. The Additional Government Pleader for the respondents is unable to refute the contention of the petitioner.

6. Accordingly, this Writ Petition is allowed. The order of the first respondent passed in CTSA.No.205/2000 and C.O.P.No.101/2000 dated 18.02.2014 and the consequential order dated 15.02.2008 in CTSA.No.205/2000 and C.O.P.No.1001/2000 are set aside. The matter is remitted back to the first respondent to hear the appeal in CTSA.No.205/2000 and C.O.P.No.101/2000 afresh after affording opportunity to the petitioner and pass orders within sixty days from the date of receipt of a copy of this order. Connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kpr
To
1.The Secretary
Tamilnadu Sales Tax Appellate Tribunal(AB)
Commercial Taxes complex
Dr.Balasundaram road,Coimbatore-18
2.The State of Tamilnadu
Rep by its Joint Commissioner (CT)
Commercial Taxes buildings
Dr.Balasundaram road
Coimbatore-18
3.The Commercial Tax Officer (CT)
now designated as Assistant Commissioner (CT)
Commercial Taxes buildings
Dr.Balasundaram road, Coimbatore-18.

1 cc to Mr. V.Sundareswaran,Advocate, SR.No.13017

Writ Petition No.32407 of 2014
and
M.P.Nos.1,2 of 2014

sai(co)pmk.31.3.2015