IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.13823 of 2015
and
M.P.No. 1 of 2015

Tvl.A.R.S.Rathinam Agencies ... Petitioner
Rep by its Proprietor R.Paranthaman
No.40/17 Vizhal Katti Pillaiyar Koil Street
Chidambaram, Cuddalore District

Vs

The Commercial Tax Officer
Chidambaram II Assessment Circle No.99-100
South Car Street Venkateswara Complex
Chidambaram 608 001 ... Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records in respect of the impugned order Assessment Order TIN 33984462474/2012-13 dt 13.2.2015 of the respondent under the Tamil Nadu Value Added Tax Act 2006 quash the same.

For petitioner : Mr.P.Asokan

For respondent : Mr.Manoharan Sundaram, AGP (Taxes)

O R D E R

Heard the learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondent.

2. This writ petition is directed against the order of the respondent dated 13.02.2015.

3. The learned counsel for the petitioner submitted that the respondent before passing the impugned order, has not adhered to the

mandatory conditions mentioned under Section 22(4) of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "2006 Act"), whereby the respondent has been obliged to provide personal hearing to the petitioner before passing the final order.

4. For the sake of convenience, Section 22 of the Tamil Nadu Value Added Tax, 2006 is extracted below:-

> "(22) Procedure to be followed by Assessing Authority:-
>
> (1)...
>
> (2)...
>
> (3)....
>
> (4) If no return is submitted by the dealer for that year, the assessing authority shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard".

5. The learned counsel for the petitioner further contended that immediately on receipt of the notice dated 28.01.2015, the petitioner also submitted their reply on 04.02.2015, bringing to the notice of the respondent that they have filed the monthly returns in Form -I for December 2012, January 2012, February 2013 and March 2013 and claimed ITC through 'e' filing. Therefore, according to him, the respondent, having received their reply dated 04.02.2015, could have properly considered the case of the petitioner. That apart, according to the learned counsel, had there been notice of personal hearing given to the petitioner, they would have appeared before the respondent and explained their case. Therefore, the impugned order passed without providing an opportunity of personal hearing is unsustainable.

6. The learned Additional Government Pleader (Taxes) appearing for the respondent, finding no answer to the 1st contention that the respondent had not complied with the conditions mentioned under Section 22(4) of the 2006 Act further submitted that if really the petitioner had filed the returns for December 2012, January 2012, February 2013 and March 2013 through 'e' filing and claimed ITC, it is incumbent on the part of the petitioner to prove his claim by producing all the relevant documents and as they did not do so, the respondent had to pass the impugned order and therefore, no interference is called for.

7. This Court finds no justification whatsoever to accept the impugned order, since the contention made by the learned counsel for the petitioner that there has been violation of mandatory conditions mentioned under Section 22(4) of the 2006 Act deserves acceptance, as there was no proper reply from the respondent.

8. Therefore, on the short ground that there has been violation of principles of natural justice by not affording an opportunity of personal hearing to the petitioner as provided under Section 22(4) of the 2006 Act, the impugned order dated 13.02.2015 is set aside and the matter is remitted back to the respondent for fresh consideration on merits and in accordance with law.

9. With the above reasoning, the writ petition stands allowed. It is needless to mention that the respondent shall provide an opportunity of personal hearing to the petitioner before passing appropriate orders. It is also open to the petitioner to file all the relevant documents to prove that they have filed the returns for the aforementioned periods.

No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Chidambaram II Assessment Circle No.99-100
South Car Street Venkateswara Complex
Chidambaram 608 001

+1cc to Mr.S.P.Asokan, Advocate, S.R.No.26081
+1cc to the Special Government Pleader(Taxes), S.R.No.26203

W.P.No.13823 of 2015

JSV(CO)
CA(18/06/2015)