IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.05.2015

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

W.P. No.14325 of 2015
and
M.P.No.1 of 2015

Tvl.VIP Marble rep. By its Partner
P.Dinesh Kumar Bafna ... Petitioner

vs.

Commercial Tax Officer,
Arisipalayam Circle, Salem. ... Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records relating to the order passed by the respondent dated 27.03.2015 in TIN:33082842487 for the assessment year 2013-14 and quash the same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also against the principles of natural justice.

For Petitioner : Mr.V.Balamurugane

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

ORDER

This writ petition has been filed under Article 226 of the Constitution of India, seeking an order in the nature of Writ of certiorarified Mandamus, to call for the records relating to the order passed by the respondent dated 27.03.2015 in TIN:33082842487 for the assessment year 2013-14 and quash the same as it is contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also against the principles of natural justice.

2.The case of the petitioner is that the petitioner is engaged in the business of trading marbles and granites etc., The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and has been assigned TIN No.33082842487. The petitioner is an assessee and has been filing monthly returns regularly with the Department and paying taxes on time. While so, the petitioner had received notice dated 17.10.2014 from the respondent for the assessment year 2013-14 rejecting the returns filed by the petitioner as incorrect and incomplete and sought to reverse the input tax credit availed by the petitioner. In the notice, it is stipulated that the petitioner can his objections within 15 days from the date of receipt of notice. The petitioner received notice on 25.10.2014 and replied vide letter dated 07.11.2014 stating that the petitioner had paid taxes to the Department and no goods were purchased outside the State of Tamil Nadu and further added that no excess input tax credit was claimed or used. The petitioner also produced the TIN of the sellers in support of the contentions and to point out that the cross verification of the Department is erroneous and incorrect. Despite having received the reply notice from the petitioner, the respondent passed an order dated 27.03.2015 with respect to assessment year 2013-14 without considering any of the contentions raised in the reply notice and without affording any opportunity of personal hearing to the petitioner. The said order was received by the petitioner only on 31.03.2015.

3.The main submission of the learned counsel for the petitioner is that after filing the reply, the respondent ought to have given an opportunity of personal hearing to the petitioner because personal hearing is not an empty formality and without giving an opportunity of personal hearing, the respondent passed the impugned order on 27.03.2015. Aggrieved over the same, the petitioner has come forward with the present writ petition.

4.In a similar writ petition, this Court, by placing reliance upon the judgment of the Division Bench of this Court reported in 2010 33 VST 333 Madras [SRC Projects Private Ltd., rep. by its Chief Executive Officer, Salem Vs. Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another], has quashed the order and directed the Assessing Authority to consider the objection and to pass a reasonable order. A copy of the order dated 30.10.2014 passed in the Writ Petitions in W.P.Nos.28322 to 28324 of 2014, is also produced before this Court.

5.Since no opportunity of personal hearing has been afforded to the petitioner, this Court is of the view that the impugned order is liable to be quashed. Accordingly, the impugned order dated 27.03.2015 is quashed. The respondent/Assessing Authority is directed to independently consider the objections filed by the petitioner, on merits and in accordance with law and pass orders, preferably within a period of eight weeks from the date of receipt of a copy of this order, after affording an opportunity personal hearing to the petitioner. The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Vacation Officer(CS II)

//True Copy//

Sub Assistant Registrar

mmi

To

The Commercial Tax Officer,
Arisipalayam Circle, Salem.

+1cc to the Special Government Pleader(Taxes), S.R.No.25289

W.P.No.14325 of 2015

TEJ(CO)
CA(22/05/2015)