IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2015

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.1444 of 2015 &

M.P.No. 1 of 2015

M/s.Kalyan Jewellers India Pvt Ltd
Rep. by its Regional Manager ,
No.166/4 ,5, 6 Cauvery Road,
Erode ... Petitioner

v.

The Assistant Commissioner
Commercial Taxes,
Nethaji Road Circle,
Erode. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarifii to call for the records of the respondent relating to his proceedings bearing TIN: 33412903482/ 2013-14, dated 31.12.2014 and quash the same.

For petitioner : Ms.P.T.Asha
for M/s.Sarvabhauman Asso.

For Respondents : Mr.V.Haribabu,
Addl. Govt. Pleader (Tax)

ORDER

The petitioner has filed the above writ petition to issue a writ of Certiorari to call for the records of the respondent relating to the proceedings dated 31.12.2014 and to quash the same.

2. According to the petitioner, they are registered dealers under the respondent under the Tamil Nadu Value Added Tax Act, 2006 and were engaged in the trading of jewelery like gold, platinum, silver and also fancy and gift articles. The Enforcement Wing Officials, Erode, had taken up the field audit of petitioner's company accounts relating to the financial year 2013-2014 on 10.01.2014, 17.01.2014, 22.01.2014 and 23.01.2014 at their business premises. During the course of their audit, the Enforcement Officials found certain discrepancies in the calculation and suggested reversal of ITC for the financial year 2013-2014 and had issued a revision notice dated 28.3.2014 to

the petitioner. The petitioner sent a detailed objections on 24.4.2014. Further, they have stated that they have done stock transfer of only gold, silver, etc, which attract only 1% tax and that they have not done any stock transfer of fancy and gift articles. The respondent again issued a notice dated 21.7.2014, for which, the petitioner sent a reply on 11.8.2014 informing the respondent that ITC has to be reversed for transfer of goods from one State to another and they had transferred only goods attracting 1% tax from the purchases from the local and therefore, they had considered the taxable turnover and input tax on 1% items while calculating ITC reversal.

3. Heard Ms.P.T.Asha, learned counsel appearing for the petitioner. Mr.V.Haribabu, learned Additional Government Pleader takes notice for the respondent.

4. On a perusal of the materials available on record, it could be seen that the respondent herein, without affording any personal hearing to the petitioner, passed an order on 31.12.2014 confirming the proposal made in the revision along with penalty calculated under section 27(4) of the TNVAT Act.

5. It is settled position that the respondent should give an opportunity to the petitioner to put forth their case. The present order was passed by the respondent without giving any opportunity to the petitioner and without taking into consideration the explanation given by them.

6. In these circumstances, the order passed by the respondent on 31.12.2014 is liable to be set aside. Accordingly, the same is set aside. The matter is remitted to the respondent for fresh consideration. The respondent shall issue notice to the petitioner fixing the date for personal hearing and on the said date, the petitioner through its authorised representative shall appear in person with all records and documents and after hearing the petitioner in person, the respondent shall pass orders on merits and in accordance with law.

With these observation, the writ petitioner is allowed. Consequently, connected miscellaneous petition is closed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar
Dated:30.1.15

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner
Commercial Taxes,
Nethaji Road Circle,
Erode.

+1 cc to M/s.Sarvabhauman Associates,SR.3292

+1 cc to Spl.Government Pleader(T),SR.3300.

gj(co)
krd 3/2

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