IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.14652 of 2015
And
M.P.No.1 of 2015

Mahindra & Mahindra Limited
Rep. by Shri R.K.Sairam,
Manager CI&S Accounts-Admn ...Petitioner

Vs.

1. The Deputy Commissioner (C.T)-II,
Large Tax Payers Unit,
5th Floor, Dugar Towers,
No.34, Marshall Road,
Chennai 600 008.

2. The Assistant Commissioner (CT),
Anna Salai Assessment III Circle,
621 Anna Salai, Sire Mansion,
Chennai – 600 006. ...Respondents

Prayer:

Writ petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the records relating to the Assessment Order TIN/33510640011/2007-2008 dated 31.03.2015 passed by the First Respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.S.Kanmani Annamalai
Additional Government Pleader (T)

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ORDER

This writ petition has been filed challenging the impugned order dated 31.03.2015 passed by the Deputy Commissioner (C.T)-II, Large Tax Payers Unit, Chennai on the ground that the same has been passed against the provisions of law and in gross violation of the principles of natural justice.

2.Learned counsel appearing for the petitioner would submit that the petitioner is registered with the second respondent assessment circle under both the Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act, 1956. The second respondent had passed a self assessment order under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006 on 25.03.2011 in which he failed to consider the revised returns filed by the petitioner on 19.05.2008 and 29.08.2009 and the difference of tax paid. Therefore, the petitioner had filed the revised return on 16.11.2010 along with a letter and seven documents explaining the excess reporting of taxable turnover to an extent of Rs.8,44,23,429/- resulting in excess payment of tax to an extent of Rs.24,63,419/-.

3.He has also explained how the excess reporting had taken place under three heads. Firstly, it was explained that the major mistake was due to inadvertant inclusion of VAT amount of Rs.8,30,16,165/- separately charged in the sale bills without including the sale price on the sale of tractors in the total and taxable turnover while filing returns. Secondly, the credit notes raised for Rs.11,00,025/- in respect of cancelled invoices was omitted to be considered in the returns filed. Thirdly, the sales return figures in the month of February, 2008 shortly reckoned to an extent of Rs.3,07,238/- in the returns filed.

4.There was no response from the second respondent to the said representation. Therefore, the petitioner came to this Court and filed W.P.No.10546 of 2011. This Court, by order dated 26.04.2011 disposed of the said writ petition directing the respondent to consider the representation of the petitioner dated 31.03.2011 for rectification of the assessment order dated 25.03.2011 passed by the respondent for the assessment year 2007-08 and to pass fresh assessment order on merits.

5.Therefore, the grievance of the petitioner is that when the petitioner had already filed application seeking certain rectification giving three clear reasons and finding no response he has come to this Court by filing writ petition and this Court also by order dated 26.04.2011 directed the respondent to consider the case

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of the petitioner, but unfortunately the respondent, without issuing any notice on the pending application under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 seeking rectification, wrongly passed an exparte order as a result of which, he has been put to great prejudice.

6.Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) who takes notice for the respondents.

7.The learned Additional Government Pleader (T) is unable to support the impugned order. The reason is that when the petitioner's application filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 seeking certain rectification on three reasons has not been considered, he has come to this Court by filing writ petition No.10546/2011 and this Court also directed the respondent to pass appropriate order on the pending application dated 31.03.2011, while so, the first respondent without issuing any notice and without giving any reasonable opportunity has passed the impugned exparte order. Therefore, the same is set aside and the matter is remanded back to the first respondent to pass a speaking order after giving personal hearing to the petitioner.

8.Accordingly, the writ petition stands allowed. No costs. Consequently, the connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner (C.T)-II,
   Large Tax Payers Unit,
   5th Floor, Dugar Towers,
   No.34, Marshall Road,
   Chennai 600 008.

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2. The Assistant Commissioner (CT),
   Anna Salai Assessment III Circle,
   621 Anna Salai, Sire Mansion,
   Chennai - 600 006.

1 CC to Mr.Joseph Prabakar, Advocate SR.No. 29476

1 CC to the Spl.Government Pleader (Taxes), SR.No. 29583

W.P.No.14652 of 2015
And
M.P.No.1 of 2015

KM (CO)
PSI (04.08.2015)

HIGH COURT OF JUDICATURE MADRAS
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