IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2015

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.No.1631 of 2015
&
M.P.No. 1 of 2015

M/s.Mogha Engineering &
Infrastructure Limited,
Rep. By its Dy. Manager,
Finance Mr.G.Prasad Rao ...Petitioner

v.

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Chennai - 600 019. ...Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TIN 33361367351/2012-13 and quash the Assessment Order dated 11.12.2014 made therein.

For petitioner : Mr.R.L.Ramani, Sr. Counsel
for Mr.B.Raveendran

For Respondents : Mr.C.B.Vishnu,
Addl. Govt. Pleader (Tax)

ORDER

The petitioner has filed the above writ petitions to issue a writ of Certiorari to call for the records of the respondent relating to the proceedings dated 11.12.2014 for the assessment year 2012-13 and to quash the same.

2. Heard Mr.R.L.Ramani, learned Senior Counsel appearing for the petitioner. Mr.C.B.Vishnu, learned Additional Government Pleader takes notice for the respondent. By consent of both the counsels, the writ petition itself is taken up for final hearing at the admission stage itself.

3. The respondent has initiated proceedings under section 22 (4) of the TNVAT Act by way of best Judgment assessment and the petitioner contended that in that event, the proviso to section

22(4) clearly stipulates that the dealer should be given a reasonable opportunity of being heard. The provisions of section 22(4) makes it clear that personal hearing is mandatory. However, on a perusal of the materials available on record it is clear that provisions of section 22(4) was not followed and the petitioner was not afforded an opportunity of personal hearing. Further, according to the petitioner, the respondent had levied tax twice on the same turnover and it amounts to double taxation, which is not permissible in law. While filing the objections, the petitioner relied upon certain case laws in support of their contentions. Therefore, if a personal hearing had been granted to the petitioner, the petitioner would have explained the double taxation and also filed copies of the judgment, which are required by the respondent.

4. In these circumstances, since the respondent had not complied with the provisions of section 22(4) of the TNVAT Act by giving an opportunity of personal hearing to the petitioner, I am of the view that the order passed by the respondent on 11.12.2014 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 on 25.02.2015 and on the said date, the petitioner through its authorised representative shall appear in person with all records and documents and file their objections and thereafter, the respondent shall pass fresh 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(CS-II)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Ambattur Assessment Circle,
Chennai - 600 019.

1 CC to Mr.B.Raveendran, Advocate SR.No. 3526

1CC to Spl. Government Pleader (T) SR 3609

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KJI (CO)
PSI (04.02.2015)