IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.16345 of 2015

M/s Balamurugan Automobiles
rep.by its Partner R.Sampath Kumar
No.93/3, New Bye-pass Road
Vellore 632 004 ...Petitioner

-vs-

The Assistant Commissioner (CT)
Vellore (Rural)
Vellore ...Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, to call for the records of the impugned order of the respondent dated 27.02.2015 bearing No.TIN:33904202558/2013-14 and to quash the same.

For Petitioner : Mr.N.Muralikumaran for M/s McGan Law Firm

For Respondent : Mr.Manoharan Sundaram Additional Government Pleader (Taxes)

ORDER

This writ petition has been filed by M/s Balamurugan Automobiles represented by its Partner R.Sampathkumar, challenging the impugned order dated 27.2.2015 passed in TIN No.33904202558/2013-14, on the ground that the respondent, who is bound by the circular No.7 of 2014 issued by the Principal Secretary/Commissioner of Commercial Taxes dated 3.2.2014 requiring the assessing officers to give reasonable opportunity to the dealers for being heard, has completely overlooked the same. Adding further, the learned counsel submitted that the petitioner, being an authorised dealer of TVS Motor Company Limited for two wheelers and their spare parts and lubricants, has been an assessee on the file of the respondent with TIN No.33904202558 and CST No.934559 dated 7.11.2008. While so, during the assessment year 2013-14, the petitioner-firm filed its returns for value added tax and declared the total and taxable turnover payable both in terms of their monthly as well as annual returns in the prescribed format. However, in the meanwhile, the enforcement wing officials made a surprise inspection from 11.7.2013 to 13.7.2013 and again on 15.7.2013 and during their inspection, no incriminating materials were recovered. Nevertheless, certain preliminary findings purported to be defects were made against the petitioner firm stating that they had not maintained purchase and sale registers as required under Rule 6(2)(b) & (c) of the Tamil Nadu Value Added Tax Rules and that the petitioner had not claimed the tax paid on its purchases as input tax credit and adjusted towards tax payable on the sales. Subsequently, the respondent issued a show cause notice based on the inspection report of the enforcement wing officials on 6.11.2014. On the same day, a reply was sent to the respondent seeking time to submit the relevant documents and also asked for the details of the miscredit and personal hearing. But the respondent has not provided the personal hearing, resultantly, the petitioner has been put to grave prejudice, since there has been a reversal of input tax credit claimed by the petitioner. In support of his submissions, the learned counsel also placed reliance on the circular No.7 of 2014 dated 3.2.2014 with regard to the violation of the principles of natural justice, as the petitioner was not provided with the personal hearing.

2. The learned Additional Government Pleader appearing for the respondent was unable to support the impugned order.

3. Paragraph-2 of the Circular No.7 of 2014 dated 3.2.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes reads as under:-

> ''2. It is also further represented that in some of the cases, objections raised by the dealers on the pre-assessment/revision notices are not properly examined/discussed in the order and assessment orders simply state ''that the objections filed by the dealers are overruled and proposals are confirmed.'' Such type of orders will not also stand in the test of law. Further, where there is a provision in the Act, requiring the dealer of being given a reasonable opportunity of being heard, which has also not been followed in many cases.''

4. In the light of the above, since the impugned order has been passed totally violating the above said circular, the same is set aside and the matter is remitted to the respondent for fresh consideration on merits. The respondent, after giving personal hearing to the petitioner, shall pass appropriate orders in accordance with law. The writ petition stands allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT)
Vellore (Rural)
Vellore

1 CC to M/s.McGan Law Firm, Advocate SR.No. 28178

1 CC to the Spl.Government Pleader (Taxes), SR.No. 28150

W.P.No.16345 of 2015

PUR (CO)
PSI (07.07.2015)