IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.16400 & 16401 of 2015

S.Sheik Abdullah
Proprietor of Tvl.Mohamed Hardware
& Electricals
No.556/B, Kallakurichi Main Road
Moongilthuraipattu
Sankarapuram Taluk
Villupuram District .. Petitioner in both the writ petitions

-vs-

1. The Commercial Tax Officer (Main)
   Kallakurichi
   Villupuram District

2. The Deputy Commissioner (CT)
   Cuddalore
   Cuddalore District .. Respondents in both the writ petitions

Petitions under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records pertaining to the orders in TIN 33454783593/2011-12 & 2012-13 dated 17.2.2015 passed by the first respondent and quash the same as improper, illegal, unreasonable, against the natural justice and thereby direct the respondents to properly assess the tax to the petitioner's shop by namely Tvl.Mohammed Hardware & Electricals and receive the amount from the petitioner.

For Petitioner :: Mr.M.V.Muralidaran

For Respondents :: Mr.Manoharan Sundaram
Additional Government Pleader

ORDER

These writ petitions have been filed by Mr.S.Sheik Abdullah challenging the impugned proceedings passed by the Commercial Tax Officer (Main), Kallakurichi in TIN:33454783593 dated 17.2.2015 for the assessment years 2011-12 & 2012-13, inter alia, contending that the respondents, without giving fair opportunity to the petitioner and based on the false records sent by third parties, have wrongly calculated and passed the present impugned orders directing the petitioner to pay a sum of Rs.3,91,901/- and Rs.2,70,706/- for the assessment years 2011-12 and 2012-13 respectively.

2. Learned counsel for the petitioner further submitted that the petitioner, having a shop in the name and style of M/s Mohamed Hardware and Electricals and running the same at No.556/B, Kallakurichi Main Road, Moongilthuraipattu, Sankarapuram Taluk, Villupuram District, registered his name in the respondents department for the payment of commercial taxes and other taxes and has also been regularly paying the same without any default. While so, the petitioner received two notices dated 30.12.2014 and 5.1.2015 for the two assessment years from the first respondent seeking explanation within 15 days that there were dues of Rs.3,91,501/- and Rs.2,70,706/- respectively for the non payment of the excess for the purchase of paints, cement sheets, steels, etc., from 26 dealers during the year 2011-12 and 28 dealers for the year 2012-13. The learned counsel for the petitioner also submitted that even prior to the receipt of the notices dated 30.12.2014 & 5.1.2015, the petitioner unfortunately met with an accident at Tiruvannamalai and sustained head injuries and other injuries all over his body and got admitted in JIPMER hospital, Puducherry. The learned counsel also produced the relevant records in support of his submissions. The head injury case record-Neurosurgery unit, JIPMER shows that the petitioner met with an accident and sustained head injuries on 19.11.2014. Therefore, the petitioner's shop was unable to submit a detailed reply, although the notices were received by one of the employees working in the shop. However, when the petitioner sought for time to submit a detailed reply, the impugned orders have been passed. Adding further, the learned counsel submitted that when the petitioner suffered head injuries and also got admitted and was treated in JIPMER hospital at Puducherry for the said accident, the respondents could have given sufficient time. Had there been sufficient time granted, the petitioner would have explained his case and the impugned orders would not have been passed, he pleaded.

3. Heard the learned Additional Government Pleader taking notice on behalf of the respondents.

4. This Court, considering the fact that the petitioner suffered an accident on 19.11.2014 much before the issuance of the notices dated 30.12.2014 and 5.1.2015, is satisfied that the petitioner was unable to submit his objections to the said notices. Even in the affidavits filed in support of the writ petitions, the petitioner has submitted that he has got a bounden duty to pay the taxes for the assessment years in question and that he is also ready to pay the same, provided he is given a reasonable opportunity to explain his case. This Court, accepting the explanation offered by the petitioner that he was prevented from submitting his explanation on account of the accident that took place on 19.11.2014 and for which

he was continuously taking treatment, is inclined to give one more opportunity to explain his case before the respondents. The petitioner, treating the impugned orders as notices, within two weeks from the date of receipt of a copy of this order, is directed to file his detailed reply along with all the documents and the respondents are directed to consider the same and, after granting personal hearing to the petitioner, shall pass appropriate orders in accordance with law. With the above direction, the writ petitions are disposed of. Consequently, M.P.Nos.1 of 2015 are closed. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

1. The Commercial Tax Officer (Main)
   Kallakurichi
   Villupuram District

2. The Deputy Commissioner (CT)
   Cuddalore
   Cuddalore District

+1cc to Special Government Pleader in SR 28147
+1cc to Mr. Muralidharan in SR 27958

W.P.Nos.16400 & 16401 of 2015

LRS (CO)
Rs 11.08.2015