IN THE HIGH COURT OF JUDICATURDE AT MADRAS

Dated: 11.06.2015

Coram

The Honourable Mr.JUSTICE T.RAJA

W.P.Nos.16569 and 16570 of 2015
and
M.P.Nos.1 and 2 of 2015

V.Santhi,
Proprietrix of Praavin Trader
(now defunct) .. Petitioner in both the W.Ps.

vs.

The Assistant Commissioner(CT),
Kangeyam,
Tiruppur .. Respondent in both the W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33083083726/2012-13 and 2013-14, dated 23.03.2015, and to quash the same.

For Petitioner : Mr.R.Hemalatha

For respondent : Mr.Manoharan Sundaram,
Addl.Govt.Pleader

COMMON ORDER

These writ petitions are directed against the impugned orders issued by the respondent, dated 23.3.2015, bearing TIN:33083083726, for the assessment years 2012-13 and 2013-14, respectively.

2. Heard the learned counsel for the petitioner and Mr.Manoharan Sundaram, the learned Additional Government Pleader, who takes notice on behalf of the respondent and perused the records carefully.

3. The learned counsel for the petitioner would submit that the petitioner is dealing in Copra and is a registered dealer on the files of the Assistant Commissioner (CT), Kangeyam, in TIN

No.33083083726. The petitioner, having reported the total and taxable turnover for the assessment years 2012-13 and 2013-14, through the monthly returns, filed in Form-I, received notices in TIN Nos.33083083726, dated 30.09.2014, for the aforesaid assessment years.

4. In the said notices, the respondent has stated that on cross verification of the monthly returns filed by the petitioner with that of M/s.MARICO Ltd., Chennai (TIN No.33111121254), it came to the light that the petitioner effected sales of Copra to the above company and collected VAT @ 5%, but has not paid the tax. Therefore, it was alleged that the petitioner has suppressed the transactions.

5. On receipt of the notices, the petitioner paid the tax due of Rs.36,16,047/- along with interest of Rs.10,94,886/- in one case and a sum of Rs.22,99,684/- along with interest of Rs.5,79,955/- in another case, on 14.10.2014. However, even after the payment of tax and interest thereon, the respondent has passed the impugned orders, dated 23.3.2015, under section 22(4) of the Tamil Nadu Value Added Tax Act, 2006, (hereinafter referred to as 'the Act' in short) and also levied penalty under Section 22(5) of the Act.

6. In the above background, the grievance of the petitioner is that when the respondent proposed to pass the best judgment assessment, under Section 22(4) of the Act, he is duty bound to give a reasonable opportunity of being heard to the petitioner, as contemplated under Section 22(4) of the Act. However, the respondent has miserably failed to do so, which resulted in the imposing of wrong penalty, and the same could have been avoided in the event of giving a personal hearing to the petitioner. Had the petitioner been given personal hearing, he could have properly brought to the notice of the respondent that immediately on receipt of the notice on 30.09.2014, they have paid the tax due of Rs.36,16,047/- along with interest of Rs.10,94,886/- in one case and a sum of Rs.22,99,684/- along with interest of Rs.5,79,955/-, in another case, on 14.10.2014. As the respondent has committed a serious error in passing the impugned orders, the same are liable to be quashed.

7. Mr.Manoharan Sundaram, the learned Additional Government Pleader, appearing for the respondent has also submitted that this is a case where the petitioner, immediately on receipt of the notices, has paid the tax dues along with interest in both the cases, on 14.10.2014 and therefore, the question of levying penalty does not arise.

8. This Court finds force in the above submission made by the learned Additional Government Pleader, which is also supporting the case of the petitioner. Therefore, the question of payment of penalty does not arise, since the petitioner has filed the returns and subsequently, on receipt of notices, on 30.09.2014, paid the tax dues along with interest in both the cases, on 14.10.2014. Since the impugned orders came to be passed in gross violation of principles of

natural justice, the same are liable to be set aside. Accordingly, the impugned orders are set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to reconsider the issue with regard to the waiving of penalty. It is needless to mention that the petitioner shall be afforded an opportunity of personal hearing, before passing fresh orders in the matter.

9. In the result, the writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Msk

To

The Assistant Commissioner(CT),
Kangeyam, Tiruppur.

+ 1 cc to Special Government pleader Sr.28567
+ 1 cc to Mrs. R. Hemalatha, Advocate Sr.28493

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LRS(CO)
Eu 08.09.15