IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

WRIT PETITION NO.16768 OF 2015
AND
M.P.NO.1 OF 2015

M/s.Sri Kumaran Hardwares
represented by its Proprietor
Suresh Babu, Chennai. ... Petitioner

Versus

The Commercial Tax Officer
Ramapuram Assessment Circle
No.1A, Ekambara Naiker Industrial Estate
Alapakkam, Porur,
Chennai - 600 116. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the respondent in TIN/33571384065/2011-12 and quash the impugned order dated 06.02.2015.

For Petitioner .. Mr.V.Sundareswaran
For Respondent .. Mr.Manokaran Sundaram
Additional Government Pleader

ORDER

This Writ Petition has been directed against the notice of penalty dated NIL/02/2015 issued by the Commercial Tax Officer, Ramapuram Assessment Circe, Chennai, which is under sub-section (1) of Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006 (Tamil Nadu Act 32 of 2006), on the ground that the respondent having failed to follow the procedure contemplated under the Act, resulting in violation of principle of natural justice and not even applied his mind to the statutory provision of the Tamil Nadu Value Added Tax Act, and explaining further referring to Rule 19 of Tamil Nadu Value Added Tax Rules, 2007, it is contended that the respondent had neither served notice dated 01.01.2015 nor served the impugned order as prescribed under the said Rule. That apart, when option was given, under Section 3(4) only to levy the tax on the taxable goods turnover and the only condition is that such dealers should purchase and sell the goods only locally and should not avail the input tax credit nor is the purchaser, who purchases the goods from such dealers are entitled for the input tax credit, the respondent has again committed yet another mistake, by his failure to see that the goods purchased by the petitioner are from the local registered dealers or at the hands of the vendors of the petitioner.

2. As per Rule 19 (1), service on a dealer of any notice or summon or order under Act or Rules to be effected either electronically or manually in any one of the following ways, namely:-

> (a) by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative; or
>
> (b) if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family; or
>
> (c) by sending it to the address of the dealer by registered post; or
>
> (d) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

As the respondent in the notice of penalty issued under Section 27 of the Act, has not referred to the compliance of any other conditions, the petitioner has sought for interference with the impugned notice.

3. Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent would submit that the impugned penalty notice has been issued under Section 27(3) of the Tamil Nadu Value Added Tax Act, 2006, and would fairly submit that when the penalty was proposed to be passed against the petitioner, the petitioner in all fairness should have been given all reasonable opportunities in compliance with the principles of natural justice.

4. A mere reading of Rule 19 of the Tamil Nadu Value Added Tax Rules, 2007, clearly shows that before issuance of notice with a proposal to levy penalty under Section 27(2) of the Act, the petitioner should have been served with summons. In the present case, when there is no evidence, whatsoever, is not able to sustain the impugned notice. That apart, the further grievance made by the petitioner is that if the respondent is allowed to proceed further, the entire business activities would come to a standstill. The impugned order also has not been served upon him, however, after applying for a certified copy, he has come to know that the respondent has violated the conditions mentioned under Rule 19 of the Rules.

5. Therefore, for the reasons mentioned above, the Writ Petition stands allowed and the impugned notice is set aside. However, the matter is remitted back to the respondent to pass appropriate orders on merits. Needless to mention that the respondent shall issue notice to the petitioner for filing objection and thereafter to pass orders on merits, after giving him personal hearing. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mra

To
The Commercial Tax Officer
Ramapuram Assessment Circle
No.1A, Ekambara Naiker Industrial Estate
Alapakkam, Porur,
Chennai - 600 116.

+1cc to M/s. Special Government Pleader, S.R.No.29016 & 29165

VD(CO)
EU(17/08/2015)

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