IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17043 of 2015

M/s Kalaivani Electrical and Hardwares
represented by its Proprietrix
S.Bhuvaneswari
No.98, Moolakulam
Villianur Main Road
Puducherry 605 010 ... Petitioner

-vs-

The Commercial Tax Officer-I
Puducherry ... Respondent

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in No.3204/CTO-I/2015-16 dated 30.4.2015 and quash the same as being contrary to the principles of natural justice, without jurisdiction and authority of law and further direct the respondent to pass order afresh after grant of copies of records and opportunity as requested for vide representation dated 25.2.2015.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.A.Tamilvanan
Government Advocate (Pondy)

ORDER

This writ petition has been filed by M/s Kalaivani Electrical and Hardwares represented by its Proprietrix Mrs.S.Bhuvaneswari assailing the impugned order dated 30.4.2015 issued by the Commercial Tax Officer-I, Puducherry, in and by which he has determined the suppressed turnover in a sum of Rs.6,58,323/- and also levied penalty in a sum of Rs.13,16,646/- and arrived at the total liability in a sum of Rs.19,74,969/-, on the ground that the respondent being a quasi judicial authority should have considered her representation dated 25.2.2015 and 27.5.2015 for supply of copies of records including the proposal received from the enforcement officer with copy of reconciliation statement.

2. Learned counsel for the petitioner further submitted that on the date of inspection conducted by the enforcement officer, the petitioner admittedly remained absent and a statement was obtained only from her husband. However, the petitioner, on arrival from outstation, sent a letter dated 25.2.2015 to the respondent requesting 15 days time and also to furnish the copy of the proposal received from the enforcement officer and the reconciliation statement so as to give a detailed reply. But before furnishing any one of the documents, the respondent has hurriedly passed the impugned order, therefore, it is a clear case of violation of the principles of natural justice, since the petitioner was not provided with a reasonable opportunity before passing the final assessment order, as a result, the respondent has unilaterally come to the conclusion that the petitioner should pay the tax demanded on the suppressed sales turnover at Rs.6,58,323/- along with penalty determined at double the amount of tax due on the suppressed turnover, which comes to Rs.13,16,646/- both put together in a sum of Rs.19,74,969/-. He has further submitted that even if a direction is given today to the respondent to furnish all the documents, the petitioner would immediately submit a detailed reply. In addition to the filing of the reply, if a personal hearing is given by the respondent, she would be in a position to convince the respondent with all the best available documents.

3. Learned Government Advocate appearing for the respondent, placing on record the official records, submitted that the request made by the petitioner in his letter dated 25.2.2015, namely, furnishing of the copy of the proposal received from the enforcement officer along with the copy of the reconciliation statement, cannot be accepted, since the petitioner was already issued with the statement recorded by the enforcement officer from the petitioner's husband. However, he is not able to substantiate the contention that the statement recorded from the petitioner's husband was furnished to the petitioner by producing the relevant documents. Secondly, he has also further submitted that the petitioner, on visiting the respondent's office on 5.2.2015, has given a written undertaking for payment of the entire dues within a month's time. When the petitioner has given a written undertaking that she would clear the entire dues as determined by the respondent, it is not open to her to turn around and challenge the correctness of the impugned order.

4. This Court finds it difficult to accept the contentions made by the learned Government Advocate for the respondent in support of the impugned order. Admittedly, the enforcement officials visited the petitioner's place of business on 17.12.2014. On the said date, during the course of inspection, the petitioner was not there, however, they obtained a statement from the petitioner's husband. A perusal of the statement given by the petitioner's husband shows that it was given only under protest. However, by a written request dated 25.2.2015, she also asked for the copy of the proposal received from the enforcement officer along with the copy of the reconciliation statement so as to file a detailed reply. But there is no record maintained by the respondent to show before this Court that a copy of the proposal received from the enforcement officer and the copy of the reconciliation statement were provided to the petitioner. It is at this point of time, the learned Government Advocate for the respondent, intervening in the matter, submitted that the assessment officer has undertaken the inspection on 17.12.2014 and noted down the following irregularities/omissions, which were also indicated in the notice dated 23.1.2015 served on the petitioner:-

> ''1. That the TIN registration certificate was not conspicuously displayed at the place of business/branch.
> 2. That no stock registers are maintained by you as required under the PVAT Act, 2007.
> 3. That sales bills/invoices were not being issued by you.
> 4. That no proper books of accounts and registers pertaining to the business for the current financial year as well as the previous years have been available at the principal place of business.''

Therefore, the question of furnishing the copy of the proposal received from the enforcement officer and reconciliation statement does not arise. This has been accepted by the learned counsel for the petitioner also.

5. In the light of the above, the impugned order is set aside and the petitioner is directed to submit a detailed reply to the notice dated 23.1.2015 within a period of two weeks from the date of receipt of a copy of this order, as she has already received a copy of the statement given by her husband. On receipt of the detailed reply,

the respondent shall grant personal hearing to the petitioner and thereafter shall pass appropriate orders in accordance with law. The writ petition stands disposed of accordingly. Consequently, M.P.No.1 of 2015 is closed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer-I
Puducherry

+1cc to Mr.R.Senniappan, Advocate, S.R.No.31388
+1cc to the Government Pleader, S.R.No.31171

W.P.No.17043 of 2015

VGI(CO)
CA(17/08/2015)