IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2382 of 2015 and M.P.No.1 of 2015

M/s.M.M.R.Enterprises,
Represented by its Proprietor Sandeep Kumar ...Petitioner

Vs.

The Assessment Commissioner (CT)
Madhavaram Assessment Circle,
Chennai-66 ...Respondent

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records on the file of the respondent in TIN:33351088239/2014-15 dated 12.12.2014 and quash the same with a direction to the respondent to grant opportunity of personal hearing.

For Petitioner :Mr.R.Kumar

For Respondent :Mr.A.r.Jayapratap
Government Pleader

O R D E R

The petitioner has come forward with the aforesaid Writ Petition challenging the impugned assessment order dated 12.12.2014 on the ground that no opportunity of personal hearing was granted to the petitioner and notice of assessment and demand has issued in the Form O and RR.

2.According to the petitioner he is engaged in the business of iron and steel and assesses on the file of the Assistant Commercial Tax Officer, Mdhavaram, Assessment Circle and a registered dealer under Tamilnadu Value Added Tax Act, 2006.

3.The learned counsel for the petitioner submitted that the petitioner requested the Assessing Officer to grant fifteen days time to file their relevant records on the ground that they shifted their place of business from 04.02.2014, but, however, the respondent has passed the assessment order against the petitioner without giving an opportunity of personal hearing.

4. The learned counsel for the respondent submitted that personal hearing was already granted in the notice and without availing the opportunity the petitioner requested further

opportunity with intention to prolong the issue and hence the authority proceeded to pass the order.

5.Heard the learned counsel for the petitioner as well as the learned counsel for the respondent and perused the documents available on record.

6. As the assessment order is yet to be over, the respondent has initiated proceedings under Section 25 of the Act, which reads as follows:

> Procedure to be followed in assessment of certain cases: (1 )If any dealer who is liable to pay tax this Act fails to submit return within the prescribed period, or if the return submitted by him appears to the assessing authority to be incomplete or incorrect, the assessing authority may, after making such enquiry as it considers necessary, determine provisionally the tax payable by the dealer to the best of its judgment;
>
> Provided that, before taking action nder this sub-section on the ground that the return submitted by the dealer is incomplete or incorrect, the dealer shall be given a reasonable opportunity of proving the correctness or completeness of the return submitted by him
>
> (2) xxx
>
> (3) The determination and collection of tax under this Section shall be subject to such adjustment as may be prescribed on the completion of the final assessment in the manner prescribed.

7. The assessing authority is empowered to determine the tax payable by the assessee. But, however, he cannot impose the penalty and issue notice in the Form O and RR and the same is not contemplated in Rule 25 extracted supra. Hence the impugned order is liable to be set aside to the extent of levy of penalty to the tune of Rs.2,33,196 /-. It is open to the assessing authority to invoke other provisions of the Act at the appropriate stage.

8. In the result, the Writ Petition is allowed. Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

kkd

To

The Assessment Commissioner (CT)
Madhavaram Assessment Circle,
Chennai-66

1 cc to Mr.R.Kumar, Advocate, Sr. 5073
1 cc to Spl.Government Pleader, (Taes), sr. 5274

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