

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.24326 of 2015

and

M.P.No.1 of 2015

Geevega Impex rep. by its Partner
A.Mohamed Areef ... Petitioner

Vs

The Assistant Commissioner (CT),
Harbour Assessment Circle,
116 Angappa Naicken Street,
1st Floor, Chennai - 1. ... Respondent

Writ petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records on the file of the respondent herein in TIN 33910001337/2013-14 dated 25.02.2015 and quash the same, with the direction to grant an opportunity of being heard after providing xerox copies of the entries in the Diary recovered by issue of Form VSI-5 dated 24.12.2013 as requested by their petition dated 09.05.2015.

For Petitioner : Mr.N.Inbarajan

For Respondents : Mr.S.Manoharan Sundaram,
Addl. Govt. Pleader (T)

ORDER

Challenging the order of the respondent in TIN 33910001337/2013-14 dated 25.02.2015 and for a direction to the respondent to afford an opportunity of hearing after providing the copies of the entries in the Diary, the petitioner has filed the present writ petition.

2.The petitioner is a partnership firm, carrying on business of importing goods viz., electric sound amplifier sets, speakers, components and accessories. The enforcement officials conducted inspection of the petitioner company on 24.12.2013 and recovered a

Diary under Form VSI-5. At the time of inspection, the petitioner also paid the tax of Rs.1,03,003/- and sought for time to file declaration forms. While so, based on the report of the enforcement officials, the respondent issued a notice dated 06.01.2015. Subsequently, the respondent issued the impugned proceedings dated 25.02.2015, confirming the proposal along with penalty. Thereafter, the petitioner made a representation dated 09.05.2015, requesting the respondent to furnish the xerox copies of the entries in the Diary. Since no response is forthcoming, the present writ petition is filed.

3. On the basis of the report forwarded by the enforcement wing authorities, an order was proposed to be made. According to the learned counsel for the petitioner, before passing such an order, no notice, as claimed by the authority, had been served. To that extent, the petitioner has made specific averment in the affidavit.

4. The learned Additional Government pleader submitted that there is no such proof available in the records for service of notice and he also fairly submitted that without giving reasons relating to purchase omission and sale suppression, the order has been passed by the assessing authority. Hence the matter may be remitted back to the respondent for passing orders afresh.

5. In view of the above, the assessment order for the assessment year 2013-2014 dated 25.02.2015 is set aside and the matter is remitted back to the authority for passing orders afresh. It is stated that except the diary, which is available with the enforcement officials, all other documents are available with the assessee. The respondent is therefore directed to furnish xerox copies of the Diary entries and a copy of the notice dated 06.01.2015 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner shall file necessary objections along with documentary evidence within two weeks. On such filing of objections, the authority shall pass appropriate orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner, so as to correlate the transaction related therein, within a period of four weeks thereafter.

6. In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

mmi

s/d-

Assistant Registrar(Records)

True Copy

Sub-Assistant Registrar

To

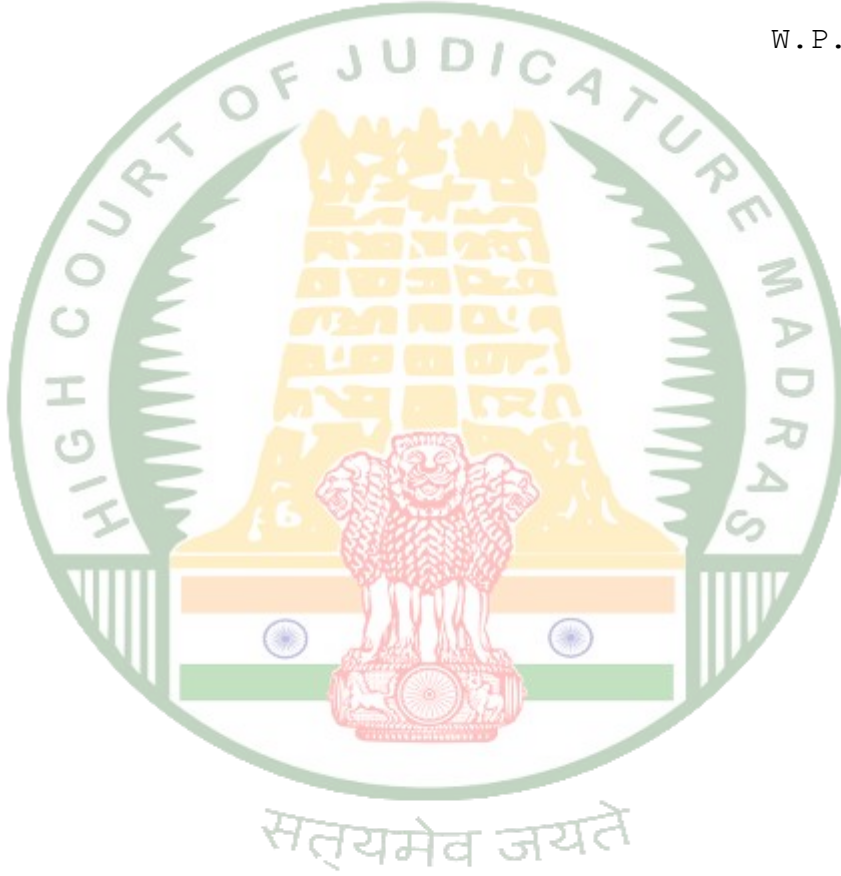
The Assistant Commissioner (CT),
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116 Angappa Naicken Street,
1st Floor, Chennai - 1.

+ 1 cc to Mr.N.Inbarajan, Advocate SR 51316

+ 1 cc to Spl.Govt. Pleader (Taxes) High Court, Madras SR 51438

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W.P.No.24326 of 2015



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