IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.09.2015

C O R A M

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.25442 of 2015

M/s.Sai Louis Traders
Rep. By its Authorised Signatory
N.Prem Anand
No.25, Thirukulam Street
Beach Road, Mamallapuram ...Petitioner

Vs

The Commercial Tax Officer
Thirukazhukundram Assessment Circle
No.42, Wahab Nagar
Thirukazhukundram ...Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the respondent in TIN/33571605419/2014-15, quash the impugned order dated 13.07.2015 as arbitrary, unreasonable and contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For petitioner : Mr.V.Sundareeswaran

For respondent : Mr.S.ManoharanSundaram, AGP.

O R D E R

This writ petition is filed praying to quash the impugned order dated 13.07.2015 passed by the respondent herein.

2. The petitioner is a registered dealer on the files of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. According to the petitioner, there was no business transaction since 2013 and the operation of iron and steel import was closed down. In such circumstances, for the assessment year 2014-

2015, the assessing officer estimated the turnover based on the previous years viz., 2010-11 and 2012-13 and accordingly, a notice dated 09.04.2015 was issued. Admittedly, having received the notice, the petitioner has not filed any reply. Hence, the impugned order came to be passed and challenging the same, the petitioner is before this Court.

3. According to the learned counsel for the petitioner, the main ground for consideration in this writ petition is that the turnover for the assessment year 2014-15 has been estimated by the assessing officer on the basis of the turnover related to 2010-11 and 2012-13 and the same is apparently improper.

4. Learned Additional Government Pleader, appearing for the respondent on the other hand submitted that because of non-filing of returns for the year 2014-15 and for non production of documentary evidence by the petitioner/assessee, the respondent has taken into consideration the turnover of the earlier assessment years viz., 2010-11 and 2012-13. Further, a counter affidavit dated 03.09.2015 has also been filed on behalf of the respondent contending as under:-

> "8. I respectfully submit that when the petitioner is called upon to give objection for the notice of proposal made for the assessment years 2010-11 to 2014-15, the onus on the part of the Writ Petitioner to come forward with necessary objection and in view of the fact of no response from the side of the dealer as the Assessing Authority, I have no other option but to confirm the proposal as stated in the notice as well as the remarks given by the BIU officials. If the dealer responded to the above said notice of proposals the repetition of turnover might not have been occurred. If the dealer has filed all its monthly returns then it would have enlightened the exact position of the dealings of the Writ Petitioner. In the absence of these materials there is no option but to confirm the proposal and the order is rightly passed."

5. Be that as it may, each and every assessment is a separate composition. The turnover related to any other assessment year than that of the present assessment year viz., 2014-15 in dispute cannot be taken into consideration for passing an assessment order. The stand taken by the respondent is that the counter affidavit above referred does not meet the legal requirements.

6. In view of the above, the impugned order dated 13.07.2015 is set aside and the matter is remanded back to the assessing officer for fresh consideration. The petitioner is permitted to file necessary objections for the notice dated 09.04.2015 along with all the documentary evidence as well copies of returns within two weeks from the date of receipt of the copy of this order. On filing of such necessary documentary evidence and objections, the same shall be considered by the assessing officer, after affording opportunity of personal hearing to the petitioner within a period of two weeks of such receipt of objections/documents and necessary orders be passed on merits and in accordance with law within a further period of four weeks, thereafter.

7. The Writ Petition is disposed of on the above terms. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

nvsri

To

The Commercial Tax Officer
Thirukazhukundram Assessment Circle
No.42, Wahab Nagar
Thirukazhukundram

1 CC to Mr.V.Sundareeswaran, Advocate SR.No. 51356

1 CC to the Spl.Government Pleader, SR.No. 51164

W.P.No.25442 of 2015

MP (CO)
PSI (12.10.2015)