IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.25736 of 2015

and M.P.Nos.1 & 2 of 2015

M/s. G.S.Agencies
Represented by its Partner P.Mani
S/o. Palaniswamy
No.1 Thadagam Road
Velandipalayam Coimbatore-641025. [Petitioner]

Vs

The Assistant Commissioner
Commercial Taxes
Velandipalayam Assessment Circle
Coimbatore.
[Respondent]

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records of the Respondent passed in Revised Assessment Order in TIN No. 33096203386/2010-11 dated 29.4.2015 and quash the same and consequently direct the Respondent to re-do the assessment after giving an opportunity to the Petitioner to put forth his case.

For Petitioner : Mr.K.R.Krishnan

For Respondent : Mr.S.Manoharan Sundaram, AGP(T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, (Taxes), who took notice for the respondent and with their consent, the main writ petition itself is taken up for disposal.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging Revised Assessment Order passed in TIN No. 33096203386/2010-11 dated 29.4.2015 and to direct the

Respondent to re-do the assessment, after giving an opportunity to the Petitioner to put forth his case.

3. The petitioner firm, being an assessee on the file of the respondent in TIN No.33096203386, is filing monthly returns under Section 3(4) of the Act on compounding basis in Form K paying tax @ 0.50% on the turnover. For the assessment year 2010-11, a scrutiny was conducted, based on which, a notice dated 03.06.2014 was issued alleging certain violations in respect of Section 3(4) of the Act. The notice states that certain purchasers were made from third party dealers, for which, the petitioner represented by its letter dated 13.06.2014, for supply of those details. The said representation was not considered and the impugned order came to be passed by the respondent by observing that the petitioner did not file any objections to the said notice. Hence, the petitioner is before this Court.

4. Learned counsel for the petitioner would submit that though details were sought for by the petitioner, without furnishing the same, the impugned order came to be passed, which is in violations of principles of natural justice. That apart, according to the learned counsel, to show the bona-fide, the petitioner has also paid 25% of the disputed tax voluntarily and on furnishing of the details sought for, if an opportunity is given to the petitioner to put forth is case, he will be able to give suitable explanation that he is not liable to pay such a huge amount.

5. Considering the submissions made by the learned counsel on either side, this Court finds some force in the argument of the learned counsel for the petitioner with regard to non furnishing of details sought for by the petitioner. Non consideration of the request to furnish details by the authority, in the opinion of this Court, is in violation of principles of natural justice. Further, the act of the respondent in proceeding further on the basis of third party invoices relating to purchases is against the legal principles as well as the provisions of the Act. Hence, this Court, finds its appropriate to set aside the impugned order and remand the matter to the respondent for fresh consideration.

6. Accordingly, the impugned order passed by the respondent dated 29.04.2015 is set aside and the matter is remitted back to the respondent for passing appropriate orders, after furnishing all the details as required by the petitioner vide their letter dated 13.06.2014. It is made clear that the respondent is directed to furnish the details as sought by the petitioner, within a period of two weeks form the date of receipt of a copy of this order and on such furnishing the details, the petitioner is permitted to file necessary objections, within a period of two weeks thereafter and on receipt of the same, the respondent is directed to consider the same and necessary orders be passed on merits and in accordance with law, after giving due opportunity to the petitioner, within a period of

four weeks thereafter.

The writ petition is disposed of with the above direction. No costs.Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar(CSV)

/true copy/

Sub Asst. Registrar

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To

1.The Assistant Commissioner
Commercial Taxes
Velandipalayam Assessment Circle
Coimbatore.

+1 cc to Mr.K.R.Krishnan Advocate sr.43797
+1 cc to the Special Government Pleader sr.44307

W.P.No.25736 of 2015

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