IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.27413 of 2015
and M.P.No.1 of 2015

M/s.Moolai Leather Exports [Petitioner]
Rep by its Proprietor Moolai Mohd. Waseem
8/312, Yaseen Street, New Town
Vaniyambadi, Vellore District

Vs

The Commercial Tax Officer (FAC)
Vaniyambadi, Vellore District.
[Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records of the respondent in his proceedings in TIN 33234642191/2008-2009 A1.211/13 (AAO-10) dated 3.7.2015 and quash the same as illegal.

For Petitioner : Mr.S.Ramanathan
For Respondent : Mr.V.Haribabu, AGP

O R D E R

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petition is taken up for disposal.

2. This writ petition is filed challenging the order of the respondent issued in TIN 33234642191/2008-2009 A1.211/13 (AAO-10) dated 03.07.2015.

3. According to the learned counsel for the petitioner, the petitioner, being a registered dealer under the TNVAT Act and CST Act and an assessee on the file of the respondent, is a dealer in Finished Leathers and is an exporter. For the assessment year 2008-09, according to the learned counsel for the petitioner, the petitioner was finally assessed to tax on the total and taxable turnover of Rs.5,03,900/- and Nil respectively under Section 22(2) of

the TNVAT Act under self assessment. In respect of the said assessment year, the respondent, by notice dated 12.03.2015, has proposed to levy tax on the purchases made from unregistered dealers besides proposing to levy interest. The petitioner, on 05.05.2015 filed a reply by stating that the purchases made from unregistered dealers were exported and they have not claimed any input tax credit on the said purchases and therefore levy of tax will not be attracted. Further, according to the learned counsel, the petitioner also pointed out that since there is no escapement of turnover, question of levying interest will not arise. The said reply was received by the respondent on 22.05.2015. However, the respondent, without considering the objections filed by the petitioner, had simply confirmed the proposal by stating that the petitioner has not filed any objections. Hence, the learned counsel for the petitioner has sought for quashing of the impugned order dated 03.07.2015.

4. Admittedly, pursuant to the notice dated 12.03.2015, the petitioner has filed a reply dated 05.05.2015, which was received by the respondent on 22.05.2015. However, without considering the same, without providing sufficient opportunity to the petitioner, the impugned order came to be passed on 03.07.2015, by stating that no objections were filed by the petitioner.

5. The learned Additional Government Pleader (Taxes) fairly submitted that on providing sufficient opportunity to the petitioner, the respondent may be directed to consider the objections and pass appropriate orders within a time frame.

6. Hence, this Court is of the view that the impugned order passed by the respondent dated 03.07.2015 is liable to be set aside and the matter has to be remitted back to the respondent for passing fresh orders, after providing due opportunity to the petitioner.

7. In view of the same, by quashing the impugned order dated 03.07.2015, the matter is remitted back to the respondent for passing orders afresh. The respondent is directed to consider the objections filed by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order, after providing due opportunity to the petitioner.

The writ petition is disposed of with the above directions. No costs. Connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer (FAC)
Vaniyambadi, Vellore District.

+1 cc to Mr.S.Ramanathan, Advocate sr.46987
+1 cc to Special Government Pleader sr.47304

W.P.No.27413 of 2015

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