IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29142 of 2015

and M.P.No.1 of 2015

Enterprises
Represented by its Proprietor
Manoj Kumar Sharma
7, Teachers Colony
Mak India Mill Road
Kalapatti, Coimbatore 641 014 [Petitioner]

Vs

The Assistant Commissioner (CT)
Peelamedu North Circle
Coimbatore 641 018 [Respondent]

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus calling for the records on the files of the Respondent herein in TIN No. 33592123679 / 2009-10 dated 31.07.2015, quashing the same, while directing the respondent herein to furnish copies of the records recovered through Form VSI-5 dated 29.03.2010.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.S.Kanmani Annamalai,
AGP(T)

O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, 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 No. 33592123679/2009-10 dated 31.07.2015 and to direct the respondent to furnish copies of the records recovered through Form VSI-5 dated 29.03.2010.

3.1 According to the learned counsel for the petitioner, the petitioner being a registered dealer on the files of the respondent are dealers in Gutka and Sodium Benzoate and they have shifted the original place of business from No.7, Teachers Colony, Mak India Mill Road, Coimbatore to their Site at No.22, Jublee Nagar I Cross, Civil Aerodrome Post, Coimbatore, with a request to make necessary changes in the certificate of registration, which was also incorporated with effect from 18.06.2012. While so, again, the petitioner made a request to shift their office and business premises to Door No.6/7-A, JMJ House, GKR Nagar, Chinniampalayam, Coimbatore, which was also brought to the notice of the respondent by their letter dated 21.07.2014.

3. 2 It is the submission of the learned counsel for the petitioner that the petitioners were buying Gutkas and Sodium Benzoate from outside the State and effecting only local sales in retail for which taxes were also paid, which fact was also explained to the enforcement authorities, who made the inspection on 29.03.2010, by producing all the relevant books and documents and at the time of inspection, the enforcement authorities have pointed out certain defects and they have recovered Book Marked A (pages 1 to 295) and Book marked B (pages 1 to 196) through Form VSI-15 for further verification. Further, according to him, during inspection, stocks were verified and certain discrepancies were noticed for that also, the petitioner was directed to pay tax, which was also paid on 29.03.2010. Thereafter, a pre-revision notice dated 12.04.2014 was issued by the respondent, in and by which, referring not only to the recovery of records by the Enforcement Wing Authorities on 29.03.2010, but he has also reiterated the defects referred by them. In the said notice, though the petitioner was called upon to appear in person, they have not availed the said opportunity. However, by letter dated 26.05.2014, while the petitioner objected to the same has requested for supply of documents recovered, which were mentioned in Mahazar VSI-5, which was also acknowledged by the respondent. While that being the case, according to the learned counsel for the petitioner, the impugned order dated 31.07.2015 was served on the petitioner through RPAD, by a different officer, which do not have any reference to the earlier notice dated 28.03.2014 or the reply dated 26.05.2014. Aggrieved over the same, the petitioner is before this Court.

3.3 The learned counsel for the petitioner submitted that notice was issued by one officer and the impugned order was passed by another officer, stating no reason, except calculating and working out the number of packets. That apart, according to the learned counsel, the petitioner's request for copies of the entries were not complied with by the respondent, even after furnishing of all the documents as required by them, as per the last paragraph of the notice. Without providing the copies of the same, the petitioner cannot file any objection is the contention of the learned counsel for the petitioner.

3. 4. The learned counsel for the petitioner also submitted that there is a clear procedural irregularity, which warrants interference of this Court.

Based on these, the learned counsel for the petitioner has sought for allowing of the writ petition.

4. There was a surprise inspection conducted on 29.03.2010 by the Enforcement Wing Authorities, during which various records were recovered. On 12.04.2014, after four years, a notice came to be issued proposing levy of tax and penalty with a further direction to submit explanation apart from directing the petitioner to produce photo copies of certain documents in order to get the seized documents. Accordingly, on 26.05.2014, the petitioner by enclosing the documents required by the respondent requested them to furnish copies of the recovered records for the purpose of filing necessary objections, followed by a letter dated 21.07.2014 requesting necessary alteration to be made in the certificate of registration pursuant to the shifting of place of business. Thereafter, without affording any opportunity, on 31.07.2015, the impugned order came to be passed. It is the specific case of the petitioner that despite the receipt of copies of documents as required by the respondent, without returning the seized documents, even after the receipt of the objections filed by the petitioner, the impugned order came to be passed, as if the petitioner did not respond to the notice. The copies of documents submitted by the petitioner were also not considered. Therefore, the impugned order is liable to be set aside.

5. The learned Additional Government Pleader (Taxes) for the respondent, after verification of the assessment records fairly submitted that the respondent, inadvertently, failed to consider the documents produced by the petitioner.

6. In view of the above, there is no other go except to set aside the impugned order dated 31.07.2015. Accordingly, the same is set aside with a direction to the respondent to furnish xerox copies of the seized documents within a period of two weeks from the date of receipt of a copy of this order to enable the petitioner to file their objections to the notice already issued and on receipt of those xerox copies of documents, the petitioner is directed to file necessary objections, within a period of two weeks thereafter and after filing objections, necessary orders be passed by the respondent on merits and in accordance with law, within a period of six weeks thereafter, after affording an opportunity of being heard to the petitioner.

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

rg

Sd/-
Assistant Registrar (Judicial)

/True Copy/

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Peelamedu North Circle
Coimbatore 641 018

+1 C.C. To MR.N.INBARAJAN, Counsel for the petitioner, in SR.NO.52352

+1 C.C. To Special Government Pleader (Taxes) SR.NO.52451 of 2015

W.P.No.29142 of 2015

VGI(CO)
sd : 09/10/2015