IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.29441 of 2015
and M.P.No.1 of 2015

M/s.Agarwal Manufacturing Co .. Petitioner
Rep by its proprietor
No.1 Railway Station Road
Shiva Sakthi Nagar Annanur
Chennai 109.

Vs

The Assistant Commissioner (CT)
Avadi Assessment Circle Chennai 54
..Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records on the files of the respondent herein in TIN 33601304072/2014-15 dt 6.4.2015 and order quashing the same as ultra virus and against the principle of natural justice.

For Petitioner : Ms.C.Rekha Kumari
For Respondent : Mr.Manoharan Sundaram, AGP(T)



O R D E R

Heard the learned counsel for the petitioner and Mr.Manoharan Sundaram, 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 33601304072/2014-15 dated 6.4.2015.

3. According to the learned counsel for the petitioner, the petitioner, is a dealer in hard board, MDF board which is imported from Thailand and Malaysia. The import is mainly done at Chennai and Mumbai port, as these are places which are nearest port for importing the goods from foreign countries. The petitioner is filing monthly

returns promptly, reporting the purchases and sales done by them. For the year 2013-14, when the petitioner has reported the imported turnover, pointing out that certain turnover were not reported, a notice was issued on 16.12.2014 calling upon them to explain the same and an opportunity of personal hearing was also afforded, however, the same was not utilized by the petitioner and the respondent proposed to levy tax by the impugned order dated 06.04.2015, by confirming the proposal. It is the grievance of the petitioner that though there is no whisper with regard to levy of penalty in the said notice dated 16.12.2014, the respondent proceeded to levy penalty in the impugned notice to the tune of Rs.1,01,742/-, without affording any opportunity. Hence, according to the learned counsel for the petitioner, the impugned order is liable to be quashed.

4. The learned Additional Government Pleader (Taxes) fairly submitted that the respondent may be directed to pass fresh orders after receiving objections from the petitioner.

5. Admittedly, the notice dated 16.12.2014 served on the petitioner is silent with regard to levy of penalty. Since without affording any opportunity with regard to imposition of penalty, the impugned order came to be passed, this Court is of the view that on that ground alone, the impugned order is liable to be interfered with and the matter has to be remitted back to the respondent for passing fresh orders, after issuing fresh notice calling for objections from the petitioner.

7. In view of the same, by quashing the impugned order dated 06.04.2015, the matter is remitted back to the respondent for passing orders afresh on merits and in accordance with law, within a period of four weeks, after receiving objections from the petitioner and after providing due opportunity to them.

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



-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Avadi Assessment Circle Chennai 54

+1 cc to Special Government Pleader (sr.51167)

W.P.No.29441 of 2015

ctk(co)
cp 06/10/2015