IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.30549 of 2015

Tvl. Sanjay Alloys Pvt. Ltd.,
represented by its Director,
Jaiprakash Gupta,
171/1, V.Kotta Road,
Pernambut ... Petitioner

Vs.

The Commercial Tax Officer,
Gudiyatham (West) Assessment Circle,
Gudiyatham. ... Respondent

Prayer : Writ petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records of the respondent in his proceedings in TIN/33784342933/2008-09, dated 31.5.2015 and quash the same as illegal.

For Petitioner : Mr.P.R. Kumar

For Respondent : Mr. S. Kanmani Annamalai
Additional Government Pleader

ORDER

The Petitioner has filed this Writ Petition challenging the impugned order passed by the respondent in his proceedings in TIN/33784342933/2008-09, dated 31.5.2015 and quash the same .

2. The petitioner, being a dealer in Iron and Steel got registered with the respondent Department and filed returns for the assessment year 2008-09. A notice for the said assessment year was issued by the respondent on 3.3.2015 stating that on verification of the import details with the data received from the Customs Department for the year 2008-2009, it reveals that the petitioner had imported iron and steel from other countries and the same was not reported to the department. On that basis, the respondent proposed to determine the taxable turnover as Rs.91,69,380/- under section 27 of TNVAT Act 2006 along with imposition of the penalty at Rs.6,87,703/-. The petitioner filed their reply dated 28.3.2015 stating that their

Pernambut Branch has never imported any materials and called for such proof of import details issued by the Customs Department. Hence the petitioner was not in a position to submit their detailed objections in the absence of documents relating to import details from Customs Department. Without considering the same, the respondent has passed the impugned order by simply confirming the proposal and determined the total and taxable turnover as Rs.91,69,380 for the year 2008-09 and also levied penalty at Rs. 6,87,703/-, against which, the petitioner is before this Court.

3. Learned counsel for the petitioner submitted that the respondent passed the impugned order without furnishing the basic details specifically sought for by the petitioner in their reply dated 28.3.2015 and the respondent has failed to consider that unless and until the details sought for by the petitioner is not furnished, the petitioner is not able to explain their stand before the respondent. Hence the impugned order passed is in violation of principles of natural justice and therefore, the same is liable to be set aside.

4. The learned Additional Government Pleader was directed to get instructions. Accordingly, he submitted written instructions dated 5.10.2015, wherein, no reasons have been adduced for not accepting the reply submitted by the petitioner for providing the documents received from the Customs Department which are the basis for passing the impugned order.

5. Time and again, the Courts have held that any documents which are all the basis for passing an order of assessment shall be produced to the assessee at his request for the purpose of filing objections related to such assessments. In the absence of those materials/evidence which are relied upon for passing order of assessment, the petitioner is not expected to file any reply to the proposal.

6. In view of the above, there is no distinguished reason to sustain the impugned order passed by the respondent and accordingly, the same is set aside and the matter is remanded back to the assessing authority for fresh consideration. The respondent is directed to furnish the copies of the documents, based upon which, the impugned order was passed, to the petitioner, within a period of two weeks from the date of receipt of a copy of this order and on such receipt of the same, the petitioner is directed to file a detailed objection within a period of two weeks thereafter. Upon filing objections, the respondent is directed to provide an opportunity of personal hearing to the petitioner and thereafter pass appropriate orders within a period of four weeks on merits and in accordance with law

7. With the above direction, this Writ petition is disposed of. No costs. Consequently, the connected M.P.No.1 of 2015 is closed.

msr

s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Gudiyatham (West) Assessment Circle,
Gudiyatham.

+ 1 cc to Mr.P.R.Kumar,Advocate SR 63520

+ 1 cc to Spl.G.P. (Taxes), High Court, Madras SR 63908

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