IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.33842 of 2015
and
M.P.No.1 of 2015

Tvl.AAA Aircon
represented by its Proprietor
(Alok malu) ... Petitioner/Petitioner

Vs

The Commercial Tax Officer (FAC)
Vellore (South) ... Respondent/Respondent

Writ petition filed under 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records of the respondent in the impugned order in TIN No.33814223511/ 2013-14 dated 27.01.2015 and quash the same as it is violative of Section 22, section 27 of the TNVAT Act, 2006 Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and direct the respondent not to proceed with the demand notice RC A3/73/2015 dated 14.09.2015.

For Petitioner : Mr.K.Vaitheeswaran

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

ORDER

The petitioner has filed this writ petition, to quash the impugned order dated 27.01.2015 relating to the assessment year 2013-14 and consequently direct the respondent not to proceed with the demand notice dated 14.09.2015.

2.The petitioner, being the registered dealer under TNVAT Act, duly filed its returns for the year 2013-14. On verification, the respondent found certain defects that purchases reported by the petitioner mismatched the accounts of the corresponding seller and also there were certain purchases made from registration cancelled dealers. Accordingly, a notice dated 15.07.2014 was issued to the petitioner, for production of original invoices, monthly returns for proof of payment and also relevant documents relating to purchases, which were not reported by the seller as sales in their returns.

3.According to the petitioner, they filed its reply dated 30.08.2014 along with necessary documents, with a specific plea that the petitioner has paid tax to the seller. Despite the same, the respondent passed the impugned assessment order dated 27.01.2015 along with penalty, thereby confirming the proposals made in the notice. Pursuant to the same, the respondent also issued a demand notice dated 14.09.2015 to the petitioner. Aggrieved against the same, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that without taking into consideration the reply filed and documents produced by the petitioner and also without providing an opportunity of personal hearing to the petitioner, the impugned assessment order came to be passed. The learned counsel for the petitioner further submitted that without verifying the payment effected and also objections filed by the petitioner, it was observed in the impugned order dated 27.01.2015 that the petitioner did not file any objection to the notice. Therefore, the impugned order is liable to be quashed.

5.On the other hand, the learned Additional Government Pleader appearing for the respondent submitted that the petitioner did not file any objection and hence, the impugned order came to be passed.

6.Heard both sides.

7.When the writ petition came up for admission, this Court directed the learned Additional Government Pleader, who took notice for the respondent, to verify as to whether the acknowledgment dated 08.09.2014 given by the Commercial Tax Officer, South enclosed at page 12 of the typed set of documents filed along with this writ petition is the reply of the petitioner to the notice dated 15.07.2014 for the Assessment Year 2013-14. After due verification, the learned Additional Government Pleader fairly submitted that the same is relating to the assessment year in question and pursuant to the notice dated 15.07.2014.

8.In view of the same, without going into the merits of the case, this Court, in order to give yet another opportunity to the petitioner, is inclined to quash the impugned order. Accordingly, the impugned order dated 27.01.2015 passed by the respondent relating to the assessment year 2013-14 is quashed. The matter is remitted back to the respondent for passing a fresh assessment order, on merits and in accordance with law. The petitioner is also permitted to file additional objections if any within a period of two weeks from the date of receipt of a copy of this order. On filing of such additional objections, the respondent shall consider the same and pass a fresh assessment order relating to the year 2013-14, after giving due opportunity of personal hearing to the petitioner, within a period of six weeks thereafter.

9.The writ petition is disposed of with the above directions. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer (FAC)
Vellore (South).

+1cc to Mr.K.Vaitheeswaran, Advocate, S.R.No.63163
+1cc to the Government Pleader, S.R.No.63486

W.P.No.33842 of 2015

PUR(CO)
CA(09/12/2015)