5IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.34496 of 2015 &
M.P.No.1 of 2015

M/s.A.F.Leathers,
Rep. by its Partner,
No.17/E, 37, P.M.O.Street,
Chennampet,
Vaniyambadi ... Petitioner

Vs

Assistant Commissioner(CT),
Vaniyambadi Assessment Circle,
Vaniyambadi. .. Respondent

Writ petition filed under 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records of the respondent and quash the assessment proceedings in TIN No.33244644077/2013-14 dated 31.07.2015 and direct the respondent to pass fresh orders by providing an opportunity of personal hearing.

For Petitioner : Mr.Baktha Siromoni
For Respondents : Mr.S.Kanmani Annamalai
Addl. Govt. Pleader

ORDER

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (T) for the respondent and with their consent, the main Writ Petition itself is taken up for hearing at the admission stage itself.

2. This Writ Petition has been filed challenging the impugned proceedings of the respondent passed in TIN No.33244644077/2013-14 dated 31.7.2015, quash the same and further to direct the respondent to pass fresh orders by providing an opportunity of personal hearing.

3. The petitioner is a registered dealer, dealing with leather products and he has been filing returns under Tamil Nadu Value Added Tax Act (hereinafter referred as TNVAT Act) every year with the respondent. For the assessment year 2013-2014, as the turn over for the said year exceeded two crores, the petitioner has filed audit report in Form WW, duly signed by the Chartered Accountant on 26.08.2015 and got acknowledgment from the department and he has also paid the required penalty of Rs.10,000/- as he has filed the audit report belatedly.

4. According to the petitioner, the respondent after receipt of Form WW, passed the impugned order on 31.7.2015 in TIN No.33244644077/2013-14, stating that no audit report in Form WW has been filed and made equal time addition of the sales reported in the TNVAT returns and also the sales under CST Act. Hence the petitioner has filed this Writ Petition.

5. The learned counsel for the petitioner submitted that the respondent has collected Rs.10,000/- as penalty for non filing of audit statements in Form WW in time for the year 2013-2014, but made the addition of equal time of turnover and levied tax twice in the impugned proceedings which is illegal. It is his further submission that as per Section 22(4) of TNVAT Act, before passing orders under the Act, the dealer shall be given a reasonable opportunity of being heard.

6. It is the specific case of the counsel for the petitioner that an assessment order under Section 22(4) of the TNVAT Act was sought to be made, but without granting an opportunity of personal hearing as provided under the TNVAT Act. Hence, the same is sustainable and liable to be quashed. He pleaded relief accordingly.

7.The learned Additional Government Pleader (T) was instructed to get details, who on instructions submitted that the petitioner filed objections, but inadvertently without considering the same and without providing an opportunity of personal hearing, the order impugned came to be passed.

8. The fair submission made by the learned Additional Government Pleader (T) is recorded and in view of the same, the impugned order passed by the respondent is set aside and the matter is remitted back to the respondent for passing appropriate orders on merits and in accordance with law, after providing due opportunity of personal hearing to the petitioner. The respondent is directed to fix the date for personal hearing within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioner in advance and on the said date, the petitioner is directed to appear before the respondent without fail. Thereafter considering the objections filed, necessary orders be passed on

merits. If the petitioner fails to comply with the direction of this Court and avail the opportunity, it is always open to the respondent to pass appropriate orders on merits and in accordance with law.

9. 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(CCC)

True Copy

Sub-Assistant Registrar

To

Assistant Commissioner(CT),
Vaniyambadi Assessment Circle,
Vaniyambadi.

+ 1 cc to Mr.C.Bakthasiromoni, Advocate SR 62485

+ 1 cc to Special Govt.Pleader (Taxes) SR 62209

gj(co)
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