IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :01.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.No. 35896 of 2015

M/s. Bright India
represented by its Proprietor
Plot No.85, 95 Kathivakkam High Road,
Korukkupet,
Chennai 600 021. Petitioner

Vs

The Commercial Tax Officer,
Washermenpet Assessment Circle,
No.20, Kummalamman Koil Street,
Chennai 600 081. Respondent

Writ Petition filed under Article 226 of the Constitution of India seeking a writ of Certiorari to call for the records of the respondent in TIN No.33771221674/2015-16, dated 30.09.2015 and quash the same.

For petitioner : Ms.C.Rekha Kumari

For respondents: Mr.S.Manoharan Sundaram
Addl. Government Pleader (T)

O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, who took notice for the respondent and with their consent, the writ petition is taken up for disposal at the admission stage itself.

2.The writ petition has been filed under Article 226 of the Constitution of India challenging the impugned order passed by the respondent in TIN No.33771221674/2015-16, dated 30.09.2015 and quash the same.

3. The petitioner is carrying on the business of Iron and Steel and a registered dealer on the files of the respondent under TN VAT Act as well as CST Act. For the months of April and May 2015, as the petitioner purchased goods from some dealers who claims to be registered dealers, the petitioner claimed ITC for the purchases effected in their monthly returns

filed for the year 2015-2016. The respondent has issued two separate provisional assessment notices dated 8.8.2015 for the months of April and May 2015, rejecting the return filed by the petitioner as incorrect and incomplete and proposed to reverse the claim of ITC. With regard to the said proposed notices dated 8.8.2015, the petitioner filed reply notice to respondent on 7.9.2015 and filed a portion of the documents and with regard to the other dealers, the petitioner sought further time. But without granting further time, the said claim of ITC was reversed by the respondent by its impugned proceedings dated 30.9.2015 on the ground that the petitioner has effected local purchases from the dealers whose registration certificate stood already cancelled. Hence the petitioner is before this Court.

4. Learned counsel appearing for the petitioner submitted that the petitioner in his reply dated 7.9.2015 enclosed a portion of the copies of the documents and appeared before the respondent and sought time for production of further documents. But without granting time, the respondent has passed the impugned order. Learned counsel for the petitioner further submitted that there was no proposal in the original provisional assessment notices dated 8.8.2015 for levy of penalty and on the other hand, while passing the impugned order dated 30.09.2015, the respondent has imposed 100% penalty of Rs.2,09,689/- which is per se illegal as the original provisional assessment notices dated 8.8.2015 as well as the impugned order dated 30.09.2015 are on different footing. Therefore, the impugned order came to be passed without providing an opportunity to the petitioner and hence prayed for quash the same.

5. Learned Additional Government(T) Pleader fairly submitted that the respondent be directed to provide yet another opportunity to the petitioner and thereafter pass appropriate orders on merits.

6. In view of the same, since no opportunity before imposing penalty was granted to the petitioner, as well as for production of documentary evidence as claimed, the impugned order deserves to be set aside. Accordingly, the same is set aside and the matter is remitted back to the respondent/assessing authority for affording an opportunity to the petitioner for appearing before him for production of necessary documentary evidence. Petitioner is directed to produce all the required documents before the respondent within a period of two weeks from the date of receipt of a copy of this order and thereafter, the respondent is directed to pass appropriate orders on merits and in accordance with law, after affording due opportunity to the petitioner within a period of six weeks. No costs.

7. The Writ Petition is disposed of in the above terms. Consequently, the connected M.P.No.1 of 2015 is closed.

Sd/-
Asst.Registrar (CS IV )

/true copy/

Sub Asst. Registrar

msr

To

The Commercial Tax Officer,
Washermenpet Assessment Circle,
No.20, Kummalamman Koil Street,
Chennai 600 081

2 ccs to Spl.G.P. Sr. 65551, 65553
1 cc to M/s.C. Rekha Kumari, Advocate, Sr. 65428

W.P.No. 35896 of 2015

RV(CO)
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