IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2015

CORAM

The Hon'ble Mr.Justice R.Mahadevan

Writ Petition No.36654 of 2015
and
M.P.No.1 of 2015

ADM Agro Industries India Pvt. Ltd.,
rep. by its Finance Controller Sumit Rohatgi
No.6/2 TST Nagar, 1st Main Road,
Arumbakkam, Chennai - 600 106. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle,
7th Floor, Dowlath Towers, No.59, Taylors Road
Kilpauk, Chennai - 600 010. ... Respondent

Prayer:-

Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for records, relating to the Assessment Order, dated 30.09.2015, passed by the respondent in TIN No.33951465239/2013-14, and to quash the same.

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.S.Manoharan Sundaram
Additional Government Pleader

O R D E R

This Writ Petition is filed, seeking to quash the proceedings, dated 30.09.2015, passed by the respondent in TIN No.33951465239/2013-14.

2. The petitioner-Company , a trader in Oil seeds, edible oil etc, is the registered dealer in the books of the respondent under TNVAT Act as well as CST Act. An inspection was conducted by the Officials of the Enforcement Wing and a report was filed, based on which, the respondent has passed the present impugned order, dated 30.09.2015, demanding the petitioner to pay huge balance of tax and penalty, failing which, recovery proceedings would be initiated against them. Aggrieved by the same, the petitioner has filed the present Writ Petition, seeking for the aforementioned relief.

3 According to the learned counsel appearing for the petitioner, the petitioner engaged in import of goods and effected High Seas sales and reported the same in their respective returns. On the basis of some materials, the reporting mode was not accepted by the respondent and he proposed to tax the transaction of the petitioner. The said proposal did not provide any intimation and the petitioner was forced to seek the said details. Despite the same, order, dated 30.09.2015 was passed. The learned counsel further submitted that, when the petitioner is handicapped without being furnished the copies of the documents, which formed the basis for passing the impugned order, there was no point for the petitioner in appearing before the respondent to putforth their defence. Unless and otherwise, the petitioner is furnished with the documents, that were collected from the Customs Department, based on which, the impugned order came to be passed, the petitioner may not be in a position to defend themselves while appearing before the respondent for filing objection.

4. On the above submissions, heard the learned counsel appearing for the respondent, and perused the materials available on record.

5. Admittedly, the respondent relied the Customs Data as the underlying and conclusive basis for passing the impugned order. When such being the case, without furnishing the relied documents, the respondent cannot pass an order, which is against the principles of natural justice. The rights of the petitioner to offer explanation/objections would be prejudiced, if those documents are not furnished, despite specific request was made. This Court finds considerable force in the stand taken by the learned counsel appearing for the petitioner.

6. Therefore, this Court, by setting aside the impugned order, dated 30.09.2015, directs the respondent to furnish the documents, which were collected from the Customs Department and relied upon by the respondent in passing the impugned order, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such documents, the petitioner shall appear before the respondent together with necessary documents and objections within a week (without waiting for any summons from the respondent) which shall be considered by the respondent and necessary orders be passed within a period of four weeks thereafter, without being influenced by the report filed by the Enforcement Wing Officials. It is made clear that, if the petitioner fails to appear before the respondent, it is open to the respondent to pass orders forthwith on merits and in accordance with law.

7. In the result, the Writ Petition is allowed on the above terms. No costs. Consequently, connected M.P. is closed.

s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT) (FAC)
Arumbakkam Assessment Circle,
7th Floor, Dowlath Towers,
No.59, Taylors Road
Kilpauk, Chennai - 600 010.

+ 1 cc to Spl.Govt.Pleader (Taxes) SR 65363

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