IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

Writ Petition No.37719 of 2015 and
M.P.No.1 of 2015

M/s.Lokesh Agency,
rep. by its Proprietor Lokanathan. ... Petitioner

Vs

The Commercial Tax Officer,
Koyambedu Assessment Circle,
Koyambedu, Chennai - 600 107. ... Respondent

Prayer:- Writ petition has been filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for records pertaining to the respondent's order and to quash the impugned order, dated 23.10.2015, vide TIN/33181345722/2013-14, issued by the respondent and to obtain explanation from the petitioner by hearing personally.

For Petitioner : Mr.Haja Mohideen Gisthi
For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader

O R D E R

With the consent of the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader for the respondent, the main Writ Petition itself is taken up for final disposal, at the stage of admission.

2. The case of the petitioner is that the petitioner is a Private Limited Company, registered under the provisions of TNVAT Act. It is engaged in the business of dealership in Tooth paste, Parry Sugar etc. Being an assessee on the file of the respondent-Department, they filed monthly returns for the assessment year 2013-2014, by which, the self assessment was completed. Thereafter, the respondent has issued a notice, dated 20.08.2015, under Section 27 (3) of the TNVAT Act, proposing to assess the escaped turnover for the assessment year 2013-2014, by which, self assessment was and also to impose penalty. The petitioner was asked to file their objection within 15 days from the date of receipt of such notice. For filing objection to the aforesaid notice, the petitioner was in need of certain

documents, which are relied upon by the respondent in issuing such notice, dated 20.08.2015. It appears that the petitioner's attempts to get those documents did not fructify and at the same time, the respondent passed order, dated 23.10.2015, which is impugned herein, confirming the proposals made in the notice, dated 20.08.2015, without even providing sufficient opportunity to the petitioner to putforth his defence. Aggrieved by the said impugned order, the petitioner has filed the present Writ Petition seeking to quash the same.

3. The main ground raised by the petitioner in this Writ Petition is that, without providing sufficient opportunity to the petitioner, despite specific request for production of documentary evidence as well as filing objection, the impugned order came to be passed. Though, such letter seeking opportunity is referred in the order, it was ignored by the respondent.

4. The learned Additional Government Pleader appearing for the respondent has fairly submitted that necessary direction be issued to the Assessing Authority for passing appropriate orders after giving due opportunity to the petitioner.

5. Considering the fact that the impugned order came to be passed against the petitioner without affording sufficient opportunity to him to putforth his defence by way of filing objection and adducing documentary evidence, the impugned order is liable to be set aside and accordingly, the same is set aside and the matter is remitted to the respondent for considering the matter afresh after affording due opportunity of hearing to the petitioner and thereafter, the respondent shall pass orders on merits and in accordance with law. The said exercise shall be completed by the respondent within a period of six weeks from the date of receipt of a copy of this order.

6. With the above observation, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sd

To

The Commercial Tax Officer,
Koyambedu Assessment Circle,
Koyambedu, Chennai - 600 107.

+ 1 cc to Mr.Haja Mohideen Gisthi, Advocate SR.64276
+ 1 cc to Mr.Government pleader, Advocate SR.64777

Writ Petition No.37719 of 2015

VS(CO)
EU 22.12.15