IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-03-2015

Coram :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

WP No. 5798 and 5799 of 2015
and
M.P. Nos. 1 and 1 of 2015

M/s. New Balaji Trading Company
represented by its Proprietor
No.6/7, Reddy Raman Street .. Petitioner in both the
Sowcarpet, Chennai - 600 079 Writ Petitions

Versus

The Commercial Tax Officer
Sowcarpet Assessment Circle
No.48/39, Rajaji Salai
Wavoo Mansion, II Floor .. Respondent in both
Chennai - 600 001 the Writ Petitions

Petitions filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN; 33580241157/2011-12 and TIN; 33580241157/2012-13 respectively and quash the order dated 05.02.2015 as passed contrary to the provisions of the TNVAT Act and also against the principles of natural justice and further direct the respondent to provide for all the documents relating to the other dealers sales annexure (Annexure II) to grant opportunity to the petitioner to cross-examine them and also to file objections and thereafter pass orders in accordance with law.

For Petitioners : Mr. P. Rajkumar
in both the writ petitions
For Respondent : Mr. Kanmani Annamalai
Additional Government Pleader (Tax)
in both the writ petitions

COMMON ORDER

The petitioner is an assessee on the file of the respondent. During the course of the petitioner's business, the respondent issued a notice dated 30.05.2014 proposing to estimate the taxable turnover of the petitioner for the assessment years 2011-2012 and 2012-2013 on the ground that the petitioner have effected transaction with some dealers. However, the details of those alleged dealers have not been furnished to the petitioner.

Therefore, the petitioner requested the respondent to furnish the details of the so-called dealers with whom they have alleged to have effected certain sales and/or purchase. Thereafter, the respondent issued a notice dated 24.07.2014 by enclosing a web report. On receipt of the petitioner, the petitioner met the respondent in person and sought for producing the copies of the invoices mentioned in the web report and also permission to cross-examine those so-called dealers to disprove that they have not effected any sale and/or purchase transaction with them. However, the petitioner was informed that the office of the respondent is likely to be re-organised and office of the Commercial Tax Officer, Assessment Circles Sowcarpet I, II and III are going to be merged in a building at NSC Bose Road. Therefore, it was informed that as and when the offices are re-organised and/or shifted, the petitioner will be furnished with the copies of the invoices, as sought for by them. The petitioner was therefore rest contended. However, by the impugned notice dated 05.02.2015, the respondent confirmed the revised proposals and called upon the petitioner to pay the tax. This according to the learned counsel for the petitioner is in violation of the principles of natural justice and without furnishing the copies of the invoices sought for by the petitioner. According to the learned counsel for the petitioner, the petitioner has no opportunity to defend the proposals made by the respondent by producing materials to substantiate their claim.

2. On the above contention, this Court heard the learned Additional Government Pleader appearing for the respondent, who submitted that it is true that the offices of the Commercial Tax Officer, Assessment Circles Sowcarpet I, II and III were proposed to be merged. However, the petitioner has not met the respondent with a request to furnish the copies of the alleged invoices. The fact remains that the petitioner did not give any reply to the notices dated 24.07.2014 and therefore the demand made by the respondent is justifiable.

3. I heard the counsel for both sides and perused the materials placed. The petitioner disputes the fact that they have not effected any sales/purchase with the so-called dealers as pointed out by the respondent. While so, whether the petitioner demanded to furnish the invoices to show the transaction they allegedly effected or not, it is the bounden duty of the respondent to furnish all the documents to substantiate their demand. In the absence of furnishing the documentary evidence to the petitioner, the respondent is not justified in demanding the tax amount from the petitioner. Such an action on the part of the respondent is in violation of the principles of natural justice. Thus, before issuing the impugned order, as the petitioner was not given an opportunity to defend the proposals made by the respondent, the impugned orders are set aside. The writ petitions are allowed. No costs. The matter is remanded back to the respondent for fresh consideration. The respondent is directed to furnish the copies of all the documents, which they rely upon to determine the tax levy on the petitioner on or before 30th March 2015. On receipt of the documents to be furnished by the respondent, the petitioner is directed to submit their objections, if any. Thereafter, the respondent shall afford an opportunity of hearing to the petitioner

and then pass orders on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar
Dated:23.3.15

True Copy

Sub Assistant Registrar

To

The Commercial Tax Officer
Sowcarpet Assessment Circle
No.48/39, Rajaji Salai
Wavoo Mansion, II Floor
Chennai - 600 001

+1 cc to Mr.P.Rajkumar, Advocate,SR.12291

+1 cc to Spl.Government Pleader,SR.12251.

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krd 26/3

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