IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04-03-2015

Coram :

THE HONOURABLE MR. JUSTICE S. VAIDYANATHAN

WP No. 5869 of 2015
and
M.P. Nos. 1 and 2 of 2015

Kumar Agencies
Rep. by its Proprietor
Mr.E.Parameswaran
No.2/835, 200 Feet Road
Eachangadu
Kovilambakkam,
Chennai - 600 117 ...Petitioner

Versus

Commercial Tax Officer
Commercial Department
Chrompet Assessment Circle
1117, Station Road, Chromepet
Chennai - 600 044. ...Respondent

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records in connection with the impugned order in proceedings No. TIN/33560943254/2011-2012 dated 09.02.2015 issued by the respondent, confirming the notice dated nil (signed on 19.01.2015), quash the same and direct the respondent to consider the monthly returns and other documents submitted by the petitioner to assess the actual turnover afresh for the year 2011-12.

For Petitioner: Mr. K.V. Subramanian, Senior Advocate
for M/s.K.V.Subramanian Associates

For Respondent : Mr. Kanmani Annamalai
Additional Government Pleader (Tax)



ORDER

The petitioner is an assessee on the file of the respondent. The petitioner had submitted monthly returns periodically and the total turnover reported by the petitioner for the year 2011-2012 was also entertained and accepted by the respondent. While so, during the course of the petitioner's business, the respondent issued a notice without date (but seems to have been signed on 19.01.2015) proposing to re-determine the taxable turnover of the petitioner for the assessment year 2011-2012 at Rs.56,84,859/- as against Rs.24,61,456/- reported by the petitioner. However, even before the petitioner could submit their objections, the respondent passed the final order of re-assessment dated 09.02.2015 whereby the estimated amount mentioned in the notice dated 19.01.2015 was confirmed.

2. The learned senior counsel for the petitioner would submit that the respondent has issued the impugned order of re-assessment without issuing any notice to the petitioner or giving any opportunity to them. Therefore, the learned senior counsel would contend that the impugned order is in violation of principles of natural justice and on that ground, he prayed for setting aside the impugned order.

3. On the above contention, this Court heard the learned Additional Government Pleader (Tax).

4. I heard the learned senior counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent. A perusal of the final order of re-assessment dated 09.02.2015 issued by the respondent would indicate that it was passed without giving an opportunity to the petitioner to submit their objections for the proposed re-assessment. In fact, even in the final order dated 09.02.2015, the respondent has merely mentioned that a notice for re-assessment was issued to the assessee and inspite of sufficient opportunity to file their objections, the assessee did not do so. In fact, the date on which the earlier notice was issued by the respondent is not mentioned in the order dated 09.02.2015. According to the learned senior counsel for the petitioner, the notice was issued without any date, however, it was signed only on 19.01.2015. Thereafter, without waiting for the assessee to file their objections to the re-assessment notice, within a period of 20 days, the respondent has passed the final order of re-assessment on 09.02.2015. Therefore, I hold that the impugned order of re-assessment passed by the respondent is in violation of principles of natural justice and on that ground it is liable to be set aside.

5. In view of the above, the impugned order dated 09.02.2015 of the respondent is set aside. The writ petition is allowed. No costs. The matter is remanded back to the respondent for fresh consideration. The petitioner is directed to appear before the respondent on 20.04.2015 on which date, the respondent shall hear the petitioner to submit their objections along with documentary evidence in support of their defence. Thereafter, the respondent shall pass orders on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/



Sub Asst. Registrar

rsh/vsg

To

The Commercial Tax Officer
Commercial Department
Chrompet Assessment Circle
1117, Station Road, Chromepet
Chennai - 600 044.

1 cc to mr.K.V. Subramanian, Advocate, sr. 12069
1 cc to Spl.Government Pleader, sr. 12250

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