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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**25.08.2015**

CORAM

THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).No.13574 of 2015
and
M.P(MD)No.1 of 2015

M/s.S.S.Kani Auto Spares,
Rep. By its Proprietor Mr.Rama Subbu ... Petitioner

Vs.

The Commercial Tax Officer(MAIN),
Tuticorin-III Assessment Circle,
Tuticorin. ... Respondent

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33545922469/2011-12 and quash the order dated 26.06.2015 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to grant an opportunity of hearing as per the provisions of the TNVAT Act.

For petitioner : Mr.R.D.Ganesan
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN No.33545922469/2011-12 and quash the order, dated 26.06.2015, as it is unlawful and in violation of the principles of natural justice and further direct the respondent to grant an opportunity of hearing as per the provisions of the TNVAT Act.

2. The learned counsel for the petitioner submitted that the petitioner is a dealer in Auto Spares and for the assessment year 2011-12, the petitioner has been originally assessed to tax on the taxable turnover of Rs.44,55,123/- at 0.5% under Section 3(4) of the Act on self assessment as per Section 22(2) of the Act. The place of business of the petitioner was inspected by the team of Enforcement Wing Officers on 25.08.2014. In the inspection report, they have pointed out that the purchase value of Rs.29,78,675/- was omitted to be reported in the returns and thereby estimated the sales suppression to the tune of Rs.33,95,690/- to arrive at the total and taxable turnover of Rs.78,50,813/- for the assessment year 2011-2012. While, making revision of assessment based upon the inspection report, the respondent had issued pre-revision notice commonly for the assessment years 2011-2012 and 2012-2013 vide notice, dated 27.03.2015. The petitioner has sought for time

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to file his objection to disprove the alleged purchase suppression arrived at by the Inspecting Authorities. But, the respondent had passed common order for the year 2011-2012 & 2013-2014 vide order, dated 14.05.2015. As every assessment year is a separate unit, the respondent has straightaway passed the impugned order for the year 2011-2012 under Section 84 of the Act. In the revised order passed under Section 84 of the Act, he has included the additional turnover of Rs.19,07,748/- at 12.5% without issuance of notice and grant of opportunity of personal hearing as stipulated under Section 84 of the Act. Since, no opportunity of personal hearing was given to the petitioner under Section 84 of the Income Tax Act, the petitioner has come forward with this Petition for the above stated relief.

3. The learned Additional Government Pleader submitted that since no opportunity of personal hearing was given to the petitioner, the matter may be remitted back to the respondent.

4. I have heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

5. In view of the submission made, this Court is inclined to set aside the order of the respondent dated 26.06.2015.

6. In the result, the Writ Petition is allowed and the order of the respondent, dated 26.06.2015, is hereby set aside. No Costs. The matter is remitted back to the respondent with a direction to issue notice to the petitioner for personal hearing and on receipt of such notice, the petitioner is directed to appear before the respondent for enquiry and the respondent is further directed to conclude the enquiry and pass appropriate orders on merits and in accordance with law. The entire exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.Side)

/True Copy/

Sub Assistant Registrar

pm

To

The Commercial Tax Officer(MAIN),
Tuticorin-III Assessment Circle,
Tuticorin.

+1CC to Mr.R.D.Ganesan Advocate Sr.No.49031
+1CC to Spl.Government Pleader sr.No.49472

GJM/SKS/RR/SARJ8.9.15-2P-4C

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