BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :07.09.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.16153 of 2015
and
M.P(MD)No.1 of 2015

M/s.Taj Maligai,
Represented by its Proprietor
I.Sahufar Sadiq ... Petitioner

Vs.

The Assistant Commissioner(CT),
Kumbakonam - IV Assessment Circle,
CT Buildings,
Kumbakonam,
Thanjavur District. ... Respondent

Prayer: This Writ Petition has been filed under Article 226 of Constitution of India praying for a Writ of Mandamus directing the respondent to summon the third party viz. Tvl.Valli Sons, Kumbakonam, whose records are relied on by the respondent for revising the Assessment and allow the petitioner to conduct cross examination of the third party viz. Tvl. Valli Sons, Kumbakonam before proceeding with the Revision Notice in TIN No.33314081196/2009-2010, dated 15.05.2015 and thereafter permit the petitioner to file their final objections and grant a personal hearing.

For petitioner : Mr.K.Soundararajan
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Mandamus directing the respondent to summon the third party viz. Tvl.Valli Sons, Kumbakonam, whose records are relied on by the respondent for revising the Assessment and allow the petitioner to conduct cross examination of the third party before proceeding with the Revision Notice in TIN No.33314081196/2009-2010, dated 15.05.2015 and thereafter permit the petitioner to file their final objections and grant a personal hearing.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3. By consent, this Writ Petition itself is taken up final disposal.

4.The case of the petitioner is that the petitioner is a dealer in provisions and cigarettes and he is an assessee on the file of the respondent. The petitioner is a registered dealer under the TNVAT Act. The petitioner purchased provisions and cigarettes from the local registered local dealers. Since the turn over of the petitioner is below Rs.50,00,000/- he opted to pay tax under Section 3(4) of the TNVAT Act by filing Form-K returns. During the assessment year 2009-2010, the petitioner had reported a total and taxable turn over of Rs.27,70,120/- and paid tax at 0.5% which was accepted by the respondent and a self assessment under Section 22(2) of the TNVAT Act, has been made on 08.07.2011. Thereafter, the place of the petitioner was inspected by the Enforcement Wing Officers on 10.12.2014 and they had verified the stocks available and recorded the same after getting statement from the petitioner. At the time of inspection, the Officers have not noticed any huge stock of cigarettes without any purchase bills and no such statement was also recorded by them. Based on the inspection result, the respondent had proposed to revise the assessment under Section 27 of the TNVAT Act for the reason that the Inspecting Officers had noticed that the purchase of cigarettes effected during the year 2009-2010 to the tune of Rs1,05,09,931/- was not supported by the purchase bills. Therefore, the respondent estimated the corresponding sales omission at RS.1,19,69,760/-and proposed to tax the same at 12.5%. The respondent had also proposed to tax the undisclosed sales turnover apart from the other income declared in the profit and loss account. The respondent proposed to assess the entire turnover under Section 3(2) instead of Section 3(4) of the Act. The respondent also proposed to levy penalty under Section 27(3) of the Act at 150% for the undisclosed turnover. The respondent vide notice dated 13.07.2015 had supplied the details of cigarette purchase made from Tvl. Valli Sons, Kumbakonam and fixed the date of personal hearing on 22.07.2015. The respondent further stated that the petitioner has to give reply on the date of personal hearing, otherwise, the revision proposed would be confirmed. The petitioner sent a petition on 13.08.2015 requesting the respondent to arrange for the cross-examination of Tvl. Valli Sons, whose records are relied on by the respondent for making the revision. The request of the petitioner was not considered so far. Hence, the petitioner has come forward with the Writ Petition for the above stated relief.

5. The learned Additional Government Pleader on instructions submitted that originally the date for personal hearing was fixed on 22.07.2015 and thereafter, it was adjourned to 13.08.2015. But

the petitioner did not appear on those days. He further submitted that if the order has not been passed so far, then the request of the petitioner to give an opportunity for cross-examining the Tvl. Valli Sons, would be considered.

6. In view of the submissions made on either side, this Court is constrained to pass the following order:

If the order has not been passed, the respondent is directed to issue summons to Tvl. Valli Sons by fixing the date for cross-examination by the petitioner and thereafter by affording an opportunity of personal hearing, pass appropriate orders on merits and in accordance with law. The entire exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

With the above direction, the Writ Petition is disposed of. No Costs.

Sd/-
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar

pm

To
The Assistant Commissioner(CT),
Kumbakonam - IV Assessment Circle,
CT Buildings,
Kumbakonam,
Thanjavur District.

+1cc to Mr.K.Soundrarajan,Advocate SR NO.52178
+1cc to Special Government Pleader SR NO.57242

W.P(MD).No.16153 of 2015
07.09.2015

RG.10.09.2015/SK/SKN/SAR-II 3P/4C