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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :18.09.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.16960 of 2015
and
M.P(MD)No.1 of 2015

Tvl.Akila Timber and Hardware,
Represented by its Proprietrix
A.Akila ...Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Shencottah Assessment Circle,
Commercial Tax Office,
No.126, Main Road,
Shengottah,
Thirunelveli District - 627 809. ...Respondents

Prayer: This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33086265617/2014-15, dated 21.05.2015 and quash the same and consequently direct the second respondent to redo the assessment afresh after giving adequate opportunity to the petitioner.

For petitioner : Mr.B.Rooban for
Mr.R.V.Manikandan Associates

For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33086265617/2014-15, dated 21.05.2015 and quash the same and consequently direct the second respondent to redo the assessment afresh after giving adequate opportunity to the petitioner.

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

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

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4. It is averred in the petition that the petitioner is the Proprietrix of 'Akila Timber and Hardware' at Door No.10-2-98/77-B, Thenkasi Road, Ayikudi, Shencottah Taluk dealing in Timbers and Hardware. The petitioner's Concern is registered on the file of the second respondent holding TIN.33086265617. During the assessment year 2014-2015, the petitioner reported a total turnover of Rs.5,10,500/- and claimed exemption on the same since the turnover falls below the threshold limit of Rs.10,00,000/- and the entire purchases and sales are within the State of Tamil Nadu. The petitioner had also filed their Annual Return in Form I-1 under Rule 7(7) of the TNVAT Act. But, the second respondent had issued the notice dated, 27.04.2015 alleging that based on the proceedings of the JC(CT) Interstate Investigation Cell in ROC No.290/2014-2015/Group III, dated 25.03.2015, the petitioner had not reported the purchase from Tvl.Shinago Infrastructure and Resources Ltd., for the value of Rs.13,54,503/- and proposed to reject the returns submitted by the petitioner. The second respondent has also proposed to add 10% of Gross profit with the alleged purchase suppression and to levy tax on it and also proposed to levy penalty under Section 22(5) of TNVAT Act. The petitioner approached the second respondent in person and explained that the alleged turn over is only purchase and that too from a registered dealer after paying legitimate taxes and the same is duly accounted for. Further, the unsold stock among the said purchase is available with the petitioner. Hence, the same cannot be brought into taxation until the sale of the same is effected. But, the second respondent without considering the explanation offered by the petitioner, has passed the impugned assessment order under Section 22(4) of the TNVAT Act in TIN.33086265617/2014-15, dated 21.05.2015 by confirming his proposal. Hence, the petitioner has come forward with the present Writ Petition challenging the order of the second respondent.

5. It is the main contention of the learned counsel for the petitioner that it is the bounden duty of the second respondent to grant an opportunity of personal hearing to the petitioner before passing any order under Section 22(4) of the TNVAT Act and therefore, the impugned order is liable to be set aside.

6. Considering the submission made by the learned counsel for the petitioner, I am of the opinion that by setting aside the impugned order, the matter may be remitted back to the second respondent for fresh consideration.

7. In the result, the Writ Petition is allowed and the order of the second respondent dated, 21.05.2015, is set aside. No Costs. The matter is remitted back to the second respondent for fresh consideration. Further, the petitioner is directed to pay 10% of the disputed tax amount within a period of two weeks from the date of receipt of a copy of this order and on such payment, the second respondent is directed to pass appropriate orders by affording an opportunity of hearing to the petitioner within a period of two weeks thereafter. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes, Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Shencottah Assessment Circle,
Commercial Tax Office,
No.126, Main Road,
Shengottah, Thirunelveli District - 627 809.

+1cc to Mr.B.Rooban, Advocate SR.No.55559

W.P(MD).No.16960 of 2015

18.09.2015

pm
NS/AAL-MPA/07.10.2015 : 3P/4C

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