BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :**07.10.2015**
CORAM
THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).No.18074 of 2015
and
M.P(MD)No.1 of 2015

Tvl.Rajalakshmi Cottage Works,
Represented by its Proprietor,
S.S.Sekar ...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,
Kamarajar Salai Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020. ...Respondents

This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33104821567/2014-15, dated 14.09.2015 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.R.Veeramanikandan
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.33104821567/2014-15, dated 14.09.2015 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.

4. In the affidavit it has been averred that the petitioner Concern is a registered dealer on the file of the second respondent vide TIN.33104821567. During the subject assessment year 2014-15, they had reported a total cum taxable turnover of Rs.10,89,440/- and filed their monthly returns regularly as required under the TNVAT Act and paid the legitimate taxes due to the Department. While the matter stood thus, to the shock and surprise of the petitioner, the second respondent had served the impugned assessment in TIN.33104821567/2014-15, dated 14.09.2015 alleging that based on the Department website report, the petitioner Concern had not reported the sales to a tune of Rs.12,59,781/- and hence, proposed to reject the returns submitted by them and to assess them under Section 22(4) of the TNVAT Act and to levy penalty under Section 22(5) of the TNVAT Act. Further, the second respondent has averred in the impugned order that he has issued a notice to the petitioner on 08.07.2015 in this regard. But, actually the second respondent had not issued any notice to the petitioner. Aggrieved by the said order, the petitioner Concern has come forward with the present Writ Petition for the above stated relief.

5. When the matter is taken up for consideration, the learned counsel for the petitioner submitted that no opportunity of hearing was given to the petitioner before passing the impugned order under Section 22(4) of the TNVAT Act and hence, the impugned order is liable to be set aside. He further submitted that in similar circumstances, this Court has passed an order remitting back the matter to the authority concerned in W.P.No.1631 of 2015, dated 23.01.2015.

6. Considering the submissions made by the learned counsel appearing for the petitioner, this Court is constrained to pass the following order:

"The Writ Petition is allowed and the impugned order of the second respondent dated, 14.09.2015, is hereby set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to consider the issue afresh by affording an opportunity of hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petition is closed. No Costs."

Sd/-
Assistant Registrar(Per Admn)

/True Copy/

Sub Assistant Registrar

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,
Kamarajar Salai Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020.

+1cc to Mr.B.Rooban, Advocate Sr.No.58927
pm
AA/MP/19.10.2015/3p-4c

W.P(MD).No.18074 of 2015
07.10.2015