BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.18657 of 2015

and

M.P.(MD)No.1 of 2015

Thakashina Agency,
rep. By its Prop. G. Vinoth Kumar,
34, Kadalaikkarar Street,
Virudhunagar - 626 001 ... Petitioner

Vs.

1. The State of Tamil Nadu,
   rep. By its Secretary to Government,
   Department of Commercial Taxes,
   Fort. St. George, Beach Road,
   Chennai - 600 009

2. The Commissioner of Commercial Taxes,
   2nd Floor, Elilagam, Chepauk,
   Chennai - 600 005

3. The Commercial Tax Officer (Enforcement Wing),
   Sattur Road Roving Squad,
   CT Building, Madurai Road,
   Virudhunagar.

4. Commercial Tax Officer-II,
   O/o. Of the Assistant Commissioner (CT)-II,
   CT Building, Madurai Road,
   Virudhunagar.

5. Assistant Commissioner (CT),
   Thiruparankundram Assessment Circle,
   CT Buildings, DR. Thangaraj Salai, Madurai.

6. Assistant Commissioner CT
   Plot. No.32, Sripuram, Thiruneermalai Road,
   Chrompet, Chennai - 600 044

7. Assistant Commissioner CT
   CT Buildings, Kajamalai,
   Trichy. ... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Pre revision notice in TIN No.33495741640/13-14 dated 04.09.2015 issued by the fourth respondent quash the same and direct the fourth respondent to furnish all the records such as invoices down loaded by him from the departmental Intra nett, to cross exam with the consignors of the petitions to accord a personal hearing and to pass fresh order for the assessment year 2013-2014.

For Petitioner ... A.S. Mujibur Rahman
For Respondent ... Mr.R. Karthikeyan
Additional Government Pleader

ORDER

The writ petition has been filed for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the Pre revision notice in TIN No.33495741640/13-14, dated 04.09.2015, issued by the fourth respondent and quash the same and direct the fourth respondent to furnish all the records such as invoices down loaded by him from the departmental Intra net, to cross exam with the consignors of the petitions to accord a personal hearing and to pass fresh order for the assessment year 2013-2014.

2. It is averred in the affidavit that the petitioner is a registered dealer in shop goods, under the Tamil Nadu Vat Act 2006 and an assessee in the books of the fourth respondent and he was assigned with TIN No.33495741640, by the fourth respondent office. The petitioner had purchased the goods etc., from registered dealer within Tamil Nadu and paid the TNVAT Tax to the consignor and he has also filed Form I returns from 01.04.2013 to 31.03.2014, to the third respondent through E nett and claimed the input credit, on the tax paid by him to his sellers. In such circumstances, the petitioner is not liable to pay any tax to the State Government as per the Rule 7(1)(a) of TN VAT Act 2006.

3. It is further averred in the affidavit that the third respondent inspected the place of business of the petitioner on 15.06.2015 and obtained a report compulsorily from the petitioner stating that the petitioner has not accounted for a sum of Rs.4,71,919/- for the purchases done by him. The petitioner has paid the payment for entire purchases through Bank only by net transfer and through Cash payment and hence, there could be no suppression of the above purchases done by him.

4. When the matter stood thus, the fourth respondent has issued a Pre revision notice in Tin No.33495741640/13-14 dated 04.09.2015. The petitioner after receiving the notice, requested 30 days further time in his letter dated 15.09.2015 to file the objections. He has stated that the fourth respondent has not furnished any records regarding the bills, mode of transport, payment details etc., and hence, he is not in a position to send the objections within a specified period of time. In such circumstances, the petitioner has filed the present Writ Petition for the relief stated supra.

5. The learned counsel for the petitioner submitted that in spite of the fact that the transaction is done by through Bank by way of net transfer, the respondents proceeded with the impugned order only basing on the information of the departmental intra net. For passing such impugned order, he has not produced the material, such as copies of bills, mode of transport and payment details for the bills which was available with him which has been downloaded from the departmental intranet. Hence, he seeks to quash the order impugned in this Writ Petition.

6. The Additional Government Pleader was put on notice, who in turn submitted that the order is passed based on the relevant materials available on record and the therefore, he prayed for sustaining the impugned order in the Writ Petition.

7. Heard the submissions made on either side and perused the materials on record.

8. Considering the submissions made on either side, without going into the merits of the averments made in the writ petition, this Court is constrained to pass the following order:

The petitioner is directed to approach the fourth respondent seeking copies of the bills, mode of transport, payment details etc., within a period of one week from the date of receipt of a copy of this order and on receipt of the same, the fourth respondent is directed to furnish the said information within a period of two weeks, from the date of receipt of the request to be made by the petitioner. After receiving the same, the petitioner is directed to file his objections within a period of fifteen days from the date of receiving necessary details from the respondents. On receipt of the objections to be made by the petitioner, the fourth respondent is directed to consider the same and pass appropriate orders, after affording an opportunity of hearing to the petitioner, on merits and in accordance with law within a period of four weeks from the date of receiving the objections. It is made clear that this Court has not expressed any opinion with regard to merits of the case on hand and the respondents shall pass appropriate orders on the materials available on record with them.

9. With the above direction, the Writ Petition is disposed of. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

1. The Secretary to Government,
   The State of Tamil Nadu,
   Department of Commercial Taxes,
   Fort. St. George, Beach Road,
   Chennai - 600 009

2. The Commissioner of Commercial Taxes,
   2nd Floor, Elilagam, Chepauk,
   Chennai - 600 005

3. The Commercial Tax Officer (Enforcement Wing),
   Sattur Road Roving Squad,
   CT Building, Madurai Road,
   Virudhunagar.

4. Commercial Tax Officer-II,
   O/o. The Assistant Commissioner (CT)-II,
   CT Building, Madurai Road,
   Virudhunagar.

5. Assistant Commissioner (CT),
   Thiruparankundram Assessment Circle,
   CT Buildings, DR. Thangaraj Salai, Madurai.

6. Assistant Commissioner CT
   Plot. No.32, Sripuram, Thiruneermalai Road,
   Chrompet, Chennai - 600 044

7. Assistant Commissioner CT
   CT Buildings, Kajamalai,
   Trichy.

+1 CC to Mr.A.S.Mujibur Rahman, Advocate, SR No.61156
+1 CC to the Special Government Pleader, SR No.61264

W.P.(MD)No.18657 of 2015
and
M.P.(MD)No.1 of 2015
13.10.2015

SH/MP-PM:08.12.2015:2P/10C