BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.19281 of 2015
and
M.P(MD)No.1 of 2015

Tvl. R.K.ENTERPRISES,
Represented by its Proprietor
A.ESAKKI MUTHU KUMARAN, aged about 45 years,
S/o E.Arunachalam,
No.182/ 22-J, S.N. High Road,
Thirunelveli Junction,
Thirunelveli - 627 001. ...Petitioner

Vs.

1. THE STATE OF TAMILNADU
   Through its Secretary to Government,
   Department of Commercial Taxes,
   St. George Fort,
   Chennai - 600 009.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
   O/o The Principal and Special Commissioner of
   Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005

3. THE COMMERCIAL TAX OFFICER,
   Thirunelveli Bazaar Assessment Circle,
   Commercial Taxes Building,
   Reserve Line Road,
   Palayamkottai
   Thirunelveli District - 627 002. ...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 third respondent in TIN.33295581506/2014-2015, dated 14.08.2015 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 Respondents : 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 pertaining to the impugned proceedings of the third respondent in

TIN.33295581506/2014-2015, dated 14.08.2015 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.The case of the petitioner Concern is that they are registered on the files of the 3rd Respondent holding TIN.33295581506. During the subject Assessment year 2014-15, they had reported total cum taxable turnover of Rs.1,03,02,208/- and paid the legitimate taxes due to the department after adjusting the Input Tax Credit available for petitioner on the tax paid on petitioner's purchases. There was an inspection in the petitioner business premises on 16.02.2015 and a statement was also obtained from the petitioner by the Enforcement Officials on the date of inspection as if a stock difference was existed at the time of inspection. Further, compounding fee of Rs.2,000/- was also collected from the petitioner for the alleged defects noticed at the time of inspection. According to the petitioner, the deemed assessment is yet to be completed by accepting the turnover reported by the petitioner through returns as the crucial date i.e., 31.10.2015 under section 22(2) of the TNVAT Act is not reached. But, pursuant to the said inspection, the 3rd Respondent has issued a Notice dated 29.04.2015 alleging that there was a difference of stock found at the time of inspection and proposed to levy tax on the same and to assess us u/s 27 of the TNVAT Act. The 3rd Respondent was also proposed to levy penalty u/s 27 of TNVAT Act. Thereafter, the petitioner requested for time to file reply since the allegation of the third respondent has to be verified with the seller. But, the third respondent has not provided any document in respect of the allegation made against the petitioner. But, to the shock and surprise of the petitioner, the 3rd Respondent has passed the impugned Assessment Order u/s 27 of the TNVAT Act in TIN. 33295581506/2014-15 dated 14.08.2015 by confirming his proposal in his Notice without providing opportunity to file reply. It is further stated that no original Assessment Order has been passed for the subject Assessment year. But, the 3rd Respondent has passed the Impugned Order as Revision of Assessment under Section 27 of the TNVAT Act. Without completing the original Assessment, no revision of assessment can be made and the same will vitiate the proceeding. Hence, challenging the order of the third respondent, the petitioner has come forward with the present Writ Petition for the above stated relief.

5. When the matter is taken up for hearing, the learned counsel appearing for the petitioner Concern submitted that all the purchases and sales were duly accounted for in the books of accounts of the petitioner Concern and therefore, before passing the impugned order, the third respondent ought to have called for the records of the petitioner Concern. Thus, he submitted that by setting aside the impugned order, the matter may be remitted back to the third respondent with a direction to consider the petitioner's case afresh.

6. The learned Additional Government Pleader objected for the same.

7. Considering the facts and circumstances of the case, this Court passes the following order:-

The petitioner firm is directed to remit 15% of the disputed tax in question to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition shall stand set aside and the third respondent is directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, the Writ Petition stands disposed of. No costs, consequently, connected miscellaneous petition is closed.

sd/-
Assistant Registrar(T & P)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
THE STATE OF TAMILNADU
Department of Commercial Taxes,
St. George Fort,
Chennai - 600 009.

2. THE COMMISSIONER OF COMMERCIAL TAXES,
O/o The Principal and Special Commissioner of Commercial Taxes,
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3. THE COMMERCIAL TAX OFFICER,
Thirunelveli Bazaar Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai
Thirunelveli District - 627 002.

+1cc to Mr.B.Rooban, Advocate Sr.No.63214

sm:NGM:04.11.2015:3P/5C

W.P(MD).No.19281 of 2015
27.10.2015