BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.19282 of 2015
and
M.P(MD)No.1 of 2015

Tvl.BALAGE PIPE TRADERS,
Represented by its Proprietor
M.R.Ganesan, aged about 64 years,
S/o. M.K.Ramasubramanian,
No. 133, S.N. High Road,
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.33545541938/2013-2014, dated 10.04.2015 and quash the same.

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 to call for the records pertaining to the impugned proceedings of the third respondent in TIN.33545541938/2013-2014, dated 10.04.2015 and quash the same.

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.33545541938. Since the entire purchase and sales are within the state of Tamilnadu and the turnover for the subject Assessment year falls below Rs.50 Lakhs, the petitioner had opted for compounding Assessment u/s 3(4) of the Tamilnadu Value Added Tax Act (herein after referred as "TNVAT Act"). Accordingly, the petitioner is neither claiming any input Tax Credit on the tax paid on the purchases nor collecting any tax on the sales and paying tax at the rate of 0.5 % on the entire taxable Sales. Further, the deemed assessment for the subject Assessment year 2013-14 under section 22(2) of the TNVAT Act was deemed to be completed as on 31.10.2014 by accepting the accounts and returns filed. But, the 3rd Respondent had issued a Notice, dated 13.02.2015 to revise the assessment for the year 2013-14 under section 27 of the TNVAT Act. The 3rd Respondent has alleged that as per the website report, the petitioner had interstate purchase of certain goods to a tune of Rs.90,943/- and also that, the petitioner had violated the condition to opt compounding Assessment u/s 3(4) of the TNVAT Act and thereby, proposed to revise the assessment u/s 27 of the TNVAT Act. The 3rd Respondent was also proposed to levy penalty u/s 27(3) of TNVAT Act. For that, the petitioner had filed their reply letter, dated 26.02.2015 with the 3rd Respondent in person categorically denying that the petitioner had not effected any such interstate purchase and requested the 3rd Respondent to provide further time to file their detailed reply and orally requested to provide the details of the alleged website report, annexure and invoices of the other end dealer to enable the petitioner to give detailed reply. But to the shock and surprise of the petitioner, the 3rd Respondent has passed the impugned Assessment Order in TIN No.33545541938/ 2013-14 dated 10.04.2015 by confirming the proposals in his Notice dated 13.02.2015 without providing the details as requested by the petitioner and without granting any opportunity of personal hearing. 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. Therefore, he further 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 (W)

/True Copy/

Sub Assistant Registrar

pm

To

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.

+1CC to Mr.Rooban Advocate Sr.No.63244

GJM/AMF/4.11.2015-3P-5C

W.P(MD).No.19282 of 2015
27.10.2015