BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :27.10.2015
CORAM
THE HONOURABLE MR.JUSTICE R.SUBBIAH
W.P(MD).No.19292 of 2015
and
M.P(MD)No.1 of 2015

M/s.Paul Sornam Tiles,
Represented by its Proprietor Jude Balan ... Petitioner

Vs.

The Assistant Commissioner(CT) - III,
Tuticorin. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records in TIN 33775924816/2012-2013, dated 04.05.2015 and to quash the same as illegal, arbitrary and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass order afresh.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader

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ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records in TIN 33775924816/2012-2013, dated 04.05.2015 and to quash the same as illegal, arbitrary and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass order afresh.

2. The case of the petitioner is that he is a dealer in Tiles and an assessee on the file of the respondent. For the year 2012-2013, the petitioner had reported a total and taxable turnover of Rs.10,67,637/- in his Form I returns. But, based on the intranet data of the Commercial Tax Department, the respondent had issued a notice in TIN 33775924816/2012-13, dated 04.05.2015 by stating that the petitioner had made interstate purchase of ceramic tiles during July 2012 to November 2012 for the turnover of Rs.17,15,096/- from various dealers. But, reported the interstate purchases in Annexure I and IA of the monthly returns for the month of July 2012 to March 2013 as Nil and therefore, a VAT proposal was formulated by arriving at the total turnover suppressed as Rs.18,86,606/- at 14.5% by adding gross profit at 10% against the interstate purchase of Rs.17,15,096/- with levy of penalty at 150% u/s.27(3)(c) of the TNVAT Act. Even though notice was served on the petitioner, due to illness, the petitioner was not able to file his reply. Thereafter, the petitioner had approached the respondent with a copy

of the records explaining all the facts. But the respondent did not acknowledge the same. Subsequently, the respondent passed the impugned order levying penalty on the petitioner. Challenging the same, the petitioner is before this Court under Article 226 of the Constitution of India.

3. The learned counsel for the petitioner submitted that before passing the impugned order, no opportunity of hearing was given to the petitioner to enable him to put forth his defence before the authorities concerned. Hence, he prayed for quashing of the impugned order of the respondent.

4. The learned Additional Government Pleader appearing for the respondent has vehemently opposed the submission of the learned counsel for the petitioner stating that the impugned order does not suffer from any illegality.

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

The petitioner firm is directed to remit 10% of the penalty imposed within a period of one week from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition stands set aside and the 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 (Writ)

/TURE COPY/

Sub Assistant Registrar

pm
To
The Assistant Commissioner(CT) - III, Tuticorin.

+1 cc to MR.S.KARUNAKAR, ADVOCATE, SR NO: 63082

JAM /04/11/2015/SKN-SK/2P-3C

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27.10.2015