BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**27.10.2015**

CORAM

THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).No.19295 of 2015
and M.P(MD)Nos.1 and 2 of 2015

Tvl.Al Arafa Tiles,
Represented by its Proprietor,
Mydeen Pitchai ...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,
Tenkasi Assessment Circle,
Commercial Tax Building,
No.56-B, Railway Feeder Road,
Thenkasi, Thirunelveli District- 627 811. ...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.33425686146/14-15, dated 29.06.2015 and quash the same and to consequently direct the second respondent to re-do 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 to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33425686146/14-15, dated 29.06.2015 and quash the same and to consequently direct the second respondent to re-do 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 second Respondent holding TIN.33425686146. The petitioner is regularly filing the monthly returns in Form I for the petitioner Concern and paid the legitimate taxes due to the department. There was an inspection in the petitioner business premises on 11.12.2014 by the Enforcement Wing Officials and it was alleged that there was sales suppression to the tune of Rs.1,09,174/- and excess stock of Rs.1,47,034/- and in this regard, 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. Based on that, payment of tax to the tune of Rs.38,429/- was collected from the petitioner. Further, compounding fee of Rs.2,000/- was also collected for the alleged defects noticed at the time of inspection. Pursuant to the said inspection, the 2nd Respondent has issued a Notice dated 27.05.2015 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 2nd Respondent was also proposed to levy penalty u/s 27(3) of TNVAT Act. Thereafter, the petitioner had sent a letter to the second respondent on 06.07.2015 requesting time to grant further time to file objection. But, to the shock and surprise of the petitioner, the 2nd Respondent has passed the impugned Assessment Order in TIN.33425686146/ 2014-15 dated 29.06.2015 by confirming his proposal in his Notice. It is further stated that no original Assessment Order has been passed for the subject Assessment year. The deemed assessment for the assessment year 2014-15 shall be deemed to be completed only on 31.10.2015. But, the 2nd 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 second 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. Further, before passing the impugned order, the

third respondent ought to have called for the records of the petitioner Concern. But, in spite of the petitioner's request for adjournment to file his reply, without granting time, the impugned order has been passed. Therefore, he further submitted that by setting aside the impugned order, the matter may be remitted back to the second 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 second respondent along with their objections, 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 second 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 petitions are closed.

Sd/-
Assistant Registrar (C.S. -I)

/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, Tenkasi Assessment Circle,
Commercial Tax Building, No.56-B, Railway Feeder Road,
Thenkasi, Thirunelveli District - 627 811.

+1cc to Mr.B.Rooban, Advocate Sr.No.63241

akm/16.11.2015 /3p-4c/

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27.10.2015