BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)Nos.19298 and 19299 of 2015
and
M.P.(MD).Nos.1 & 1 of 2015

Tvl.Famous Tiles Gallery,
Represented by its Proprietor,
C.Chandramohan, aged about 37 years,
S/o.Chinnathambi,
North Bye-pass Road,
Udayarpatti,
Tirunelveli-627 001. ... Petitioner in both WPs

Vs.

1.The State of Tamil Nadu,
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 Assistant Commissioner (CT)
Palayamkottai Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Tirunelveli District-627 002. ... Respondents in both Wps

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the impugned proceedings of the third respondent in TIN:334155669871/2013-14 and TIN.33415566987/2014-2015 dated 14.09.2015, quash the same as illegal.

For Petitioner : M/s.B.Rooban

For Respondent : Mr.R.Karthikeyan
Additional Govt.Pleader

COMMON ORDER

Both the writ petitions have been filed praying for a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN:334155669871/2013-14 and TIN:33415566987 2014-2015 dated 14.09.2015, and quash the same.

2. Since the issue involved in both the Writ Petitions are one and the same, they are taken up together and disposed of by a common order.

3. The petitioner is the Proprietor of the business concern in the name and style of 'Famous Tiles Gallery'. The petitioner concern is registered on the file of the third respondent and holding TIN.33415566987 in the impugned Order. The petitioner regularly filing the returns under Tamil Nadu Value Added Tax Act and paying the legitimate taxes due to the department after adjusting the Input Tax Credit available for the petitioner. The petitioner assessment for the subject assessment year was deemed to be completed on 31.10.2014 under Section 22(2) of the TNVAT Act by accepting the turnover reported by the petitioner through returns. There was an inspection in the petitioner's business premises on 14.02.2015 and at the time of inspection a statement has been recorded arbitrarily by the enforcement wing officials arbitrarily as if there was a sales and purchase suppression.Pursuant to the said inspection the third respondent has issued a Notice dated 29.05.2015 to revise the assessment for the year 2013-2014 and 2014-2015 under Section 27 of the TNVAT Act. The third respondent has alleged vide his notice that as per the website report of the cross verification of buyers and seller's annexure-I there was a difference of purchase to a tune of Rs.10,57,320/- and also that the petitioner has suppressed various other purchases and sales and the details of the same was not provided. The third respondent was also proposed to levy tax on the alleged stock difference arrived at the time of inspection and also proposed to levy penalty u/s 37(3) of TNVAT Act. The petitioner has filed a reply in respect of both the assessment year letter, dated 23.07.2015 to the third respondent through registered post and requested to provide the petitioner the details of the alleged website report, annexure and invoices of the other end dealer to enable us to give detailed reply. The third respondent has passed the impugned Assessment Order TIN-334155669871/2013-14 and 2014-15 dated 14.09.2015 by confirming the proposals in his notice dated 29.05.2015 without providing the details as requested by the petitioner and without granting any opportunity of personal hearing. Hence, challenging the said impugned orders, the present Writ Petitions have been filed.

4. The learned counsel for the petitioner submitted that without considering the detailed objection given by the petitioner firm and without providing an opportunity of hearing, the impugned orders have been passed. Hence, the impugned orders are liable to be set aside.

5. The learned Additional Government Pleader appearing for the respondents has vehemently opposed the submission of the learned counsel for the petitioner and prayed for the dismissal of the writ petitions stating that the impugned order does not suffer from any illegality.

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

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

7.With the above direction, this Writ Petitions stand disposed of. No costs, consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1.The 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 Assistant Commissioner (CT)
Palayamkottai Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Tirunelveli District-627 002.

+1cc to Mr.S.Rooban, Advocate SR.No.63242
+1cc to Mr.S.Rooban, Advocate SR.No.63243

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and
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27.10.2015

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NS/ARK/16.11.2015 : 3P/6C