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.19302 and 19303 of 2015
and
M.P.(MD).Nos.1 & 1 of 2015

Tvl.The Best Aluminium,
Represented by its Proprietor,
S.Sankar, aged about 36 years,
S/o.Samy
No.183-E/2, S.N.High Road,
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 Deputy Commercial Tax Officer,
Tirunelveli Bazaar 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:33065641821/2013-14 and 2014-2015 dated 10.06.2015, quash the same as illegal.

For Petitioner in both petitions : M/s.B.Rooban

For Respondent in both petitions : 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:33415566987/2013-14 and 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 'The Best Aluminium'. The petitioner concern is registered on the file of the third respondent and holding TIN.33065641821. Since the petitioner's entire purchase and sales are within the State of Tamil Nadu and the turnover for the subject Assessment year falls below Rs.10 lakhs. The petitioner's entire turnover is exempted from taxation u/s 3(1)(b) of the Tamil Nadu Value Added Tax Act. The petitioner have reported Rs.8,49,749/- through the annual return in Form I-1 and the third respondent has passed the deemed assessment order, dated 05.06.2014 under Section 22(2) of the TNVAT Act for the subject Assessment year 2013-2014 and 2014-2015. The third respondent has issued a Provisional Assessment Notice dated 23.03.2015 to revise the assessment for the year 2013-14 and 2014-2015 under Section 25 of the TNVAT Act and the petitioner received the same on 10.04.2015. The petitioner was shocked to notice that the 3rd Respondent has alleged vide his notice that the petitioner have not filed any returns for the subject assessment year and pursuant to the web-site report, the petitioner has suppressed purchase of certain goods to a tune of Rs. 18,60,391/- and Rs.10,40,294/- and thereby provisionally assess by adding gross profit on the alleged purchase suppression and also to add 50% addition for the alleged purchase omission. It is pertinent to note here that the 3rd Respondent though has mentioned as “Encl:- One”, nothing has been enclosed with the said notice. The above said notice issued by the 3rd Respondent is totally devoid of particulars and it is nowhere mentioned in the notice that from whom the alleged purchase were made and as how many transactions and through which invoice/invoices the alleged purchases made. The petitioner has personally met the 3rd Respondent in person explained that he has duly filed annual return and categorically denying that he has not effected any such purchase and requested the 3rd Respondent to provide the details of the alleged website report, annexure and invoices of the other end dealer to enable us to give detailed reply. But, the 3rd Respondent has passed the impugned Assessment Order in TIN/ 33065641821/ 2013-14 and 2014-15 dated 10.06.2015 u/s 22(4) of the TNVAT Act and also levied penalty u/s 22(5) of the TNVAT Act which are all totally contrary to the proposals in his Notice dated 13.02.2015. Further the 3rd Respondent has passed the Impugned Order u/s 22(4) of the TNVAT Act without providing the details as requested by the petitioner and without granting any opportunity of personal hearing. The 3rd Respondent has not mentioned about the Annual return filed by the petition and also not mentioned his earlier Order dated 05.06.2014. The 3rd Respondent in his deemed assessment order dated 05.06.2014, has categorically observed that the petitioner has reported turnover through Form I-1 return and assessed the same. But, the 3rd Respondent now in the impugned proceeding has falsely stated that the petitioner has not filed any returns and the same is highly arbitrary, illegal and against the factual position. The Provisional Assessment can be made only before the completion of the assessment year. But, the 3rd Respondent has issued the Provisional Assessment Notice u/s 25 of the TNVAT Act on 09.04.2015 i.e., more than one year after the completion of the Assessment Year and after the completion of the deemed assessment and the same is not sustainable. In controversy to his own notice, the 3rd Respondent has passed the Impugned Order u/s 22(4) of the TNVAT Act and levied penalty without proposing in the notice. Further, when once the deemed assessment

has been completed again no original assessment can be made u/s 22(4) of the TNVAT Act. 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 Deputy Commercial Tax Officer, Tirunelveli Bazaar Assessment Circle,
Commercial Taxes Building, Reserve Line Road,
Palayamkottai, Tirunelveli District-627 002.

+2cc to M/S. B.Rooban, Advocate in SR.No. 63247 & 63248

TS/03.11.2015/3P-6C/AN-MP/SAR II

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