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.19314 and 19315 of 2015
and
M.P.(MD).Nos.1 & 1 of 2015

Tvl.Muthumani Agency,
Represented by its Proprietor,
V.Dharmakrishnan, aged about 56 years,
S/o.Veerachamy,
33-H, Ramasamy Koil Street,
Cheranmadevi,
Tirunelveli District-627 414. ... 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 Commercial Tax Officer (Additional)
Ambasamudram Assessment Circle,
Commercial Taxes Office,
1/22, Thilagapuram,
Main Road, Ambasamudram,
Tirunelveli District-627 401.
... Respondents in both WPs

Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the third respondent in VAT No.33745622532/2012-2013 and 2013-14, dated 05.10.2015 and to quash the same and consequently direct the third respondent to re-do the assessment afresh after providing the petitioner adequate opportunity.

For Petitioner : M/s.B.Rooban

For Respondents : 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 VAT No.33745622532/2012-2013 and 2013-14, dated 05.10.2015 and to quash the same and consequently direct the third respondent to re-do the assessment afresh after providing the petitioner adequate opportunity.

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 'Muthumani Agency'. The above said concern is registered on the file of the 3rd Respondent holding TIN.33745622532. The petitioner regularly filing the monthly returns under Tamilnadu Value Added Tax Act he has promptly adjusted the legitimate tax dues to the department from the Input Tax Credit available for the petitioner on the tax paid on the petitioner purchases. During the Assessment Year 2012-13 (TNVAT), the petitioner reported total and taxable turnover of Rs. 1,47,82,414/- and Rs. 1,47,27,159/- and for the year 2013-14, Rs.1,25,70,348/- and Rs.1,25,42,681/- respectively through returns and adjusted the corresponding tax dues to the Respondent Department from the Input Tax Credit available for the petitioner. It is deemed that the 3rd Respondent has passed the Deemed Assessment order on 31.10.2013 and 31.10.2014 by accepting the petitioner's returns u/s 22(2) of the Tamilnadu Value Added Tax Act. The 3rd Respondent has issued a Revision of Assessment Notice dated 28.04.2015 alleging that on verification of the department web-site, it is found that they have not reported the alleged purchase returns which is reported by some other end dealer and some of the other end dealers had not reported the sales to Petitioner and not paid tax for which they have claimed and availed Input Tax Credit towards the taxes paid on the corresponding purchases made from them and proposed to levy tax on the same after adding gross profit and also to levy penalty u/s 27 of the TNVAT Act. The petitioner's entire purchases were duly accounted for in the petitioner's books of accounts. Further, there is no material defect or wrong availment of ITC as alleged by the 3rd Respondent in his above said notice. Hence, the petitioner has filed a detailed reply along with the copies of the sale bills and returns filed with the 3rd Respondent explaining that, no input tax claimed on basis of the tax invoice can be denied on the ground that the other end dealer failed to report the same or not paid the taxes. The petitioner has also orally requested the 3rd Respondent and to provide the copies of the alleged Invoice copies and annexures of the alleged other end dealers and also categorically requested to grant him an opportunity of personally being heard. In the said reply dated 23.07.2015 it has been specifically stated that the petitioner has not returned any purchase and not received any credit notes during the subject assessment year and requested the 3rd Respondent to drop his proposals by accepting the petitioner contentions. Thereafter, the 3rd Respondent has passed the impugned Assessment Order in VAT No. 33745622532/ 2012-13 and 2013-14 dated 05.10.2015 by confirming his proposal vide his Notice dated 28.04.2015. In the said Impugned Order the 3rd Respondent has not at all observed the contentions made by the petitioner orally. The petitioner's entire purchases were duly accounted for in his books of accounts. Further, no material defect or evasions of sales were pointed out by the 3rd Respondent either in his above said notice or in the impugned Order. The petitioner has also categorically denied the allegations of the 3rd Respondent leveled against him. While

things being so if at all any doubt arise, he ought to have provided him the copy of the web-site report and Annexure and invoice copies of the alleged other end dealers as requested by the petitioner and then has to called for the petitioner books of accounts to verify whether the purchases as per the department website report are accounted for or not and then he has to record the reason for not accepting the petitioner's contentions and then only he has to pass the assessment order. But, inspite of our request to provide the documents relied upon by the 3rd Respondent in his notice against the petitioner the impugned order has been passed arbitrarily. 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 Commercial Tax Officer (Additional),Ambasamudram Assessment Circle,
Commercial Taxes Office, 1/22, Thilagapuram, Main Road,
Ambasamudram, Tirunelveli District-627 401.
+2cc to M/S. B.Rooban, Advocate in SR.No. 63251 & 63225
TS/03.11.2015/3P-6C/AN-MP/SAR II

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