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.19324 and 19325 of 2015
and
M.P.(MD).Nos.1 & 1 of 2015

Tvl.Valliyammai Metal Store,
Represented by its Proprietor,
S.Prabaharan, aged about 37 years,
S/o.Sivasubramaniam,
24/1, Anna Street,
Tirunelveli Town,
Tirunelveli District-627 006.
... 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 Town 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 TNVAT No.33045581983/2013-2014 and 2014-15, dated 15.09.2015 and to quash the same.

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 TNVAT No.33045581983/2013-14 and 2014-15, dated 15.09.2015 and to 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 'Valliyammai Metal Store'. The above said concern is registered on the file of the 3rd Respondent holding TIN.33045581983. 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 2013-14 (TNVAT) and 2014-15, the petitioner reported total and taxable turnover of Rs. 12,02,506/- for the year 2013-14 and 16,88,067/- for the year 2014-15 respectively through returns and paid the corresponding taxes due to the Respondent Department and 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. The 3rd Respondent has issued a Notice dated 18.06.2015 to revise the Assessment for the year 2013-14 under Section 27 of the TNVAT Act and for the year 2014-15 under Section 22(4) of the TNVAT Act pursuant to the alleged scrutiny of returns. The third respondent has alleged vide his notice that on the verification of the returns filed by him, he has suppressed the purchase turnover and sales turnover. Further, he has failed to reverse Input Tax credit on the wastages on the manufacturing of Brass vessels and proposed to reverse the same at the rate of 10% on the total raw materials. The third respondent was also proposed to levy penalty u/s 27(3) and 22(5) of TNVAT Act. However, the petitioner has filed a detailed reply letter dated 05.09.2015 to the third respondent explaining that he has not suppressed any purchase or sales turnover as alleged by the respondents. He has also enclosed the relevant bill copies, annexures, annexure of other end dealer and revised return in respect of the alleged sales and purchase. In his reply that, for manufacturing of brass vessels he is giving the brass sheets to the manufacturers and they are giving vessels for the same weight and used to collect the coolie consolidated and he has not incurring any wastage and in this regard he has enclosed the copies of the Ledger pages of the manufacturers and requested to drop his proposals in this regard. Further, he has requested the third respondent to provide an opportunity of personal hearing. But the third respondent has passed the impugned Assessment Order in TNVAT No.33045581983/2013-14 and 2014-15 dated 15.09.2015 without considering the reply of the petitioner properly and without granting an opportunity of personal hearing as requested by the petitioner. The petitioner received the said order and shocked to notice that it was mentioned that, the revised return filed by the him was not acceptable and Petitioner's explanation with regard to the alleged wastage on manufacturing of brass vessels are not acceptable. The third respondent has not even discussed the documents filed by the petitioner with regard to the alleged wastage of manufacturing and not provided the opportunity of personal hearing as requested by the petitioner. Though the notice issued by the third respondent was suitably explained by the petitioner, inspite of it, without giving any opportunity of personal hearing and without conducting any enquiry, 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 four weeks, thereafter.

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

Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub Assistant Registrar

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To

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Department of Commercial Taxes,
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Chennai-600 009.

2.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
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3.The Deputy Commercial Tax Officer,
Tirunelveli Town Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Tirunelveli District-627 002.

+2CC to Mr.B.Rooban Advocate Sr.No.63249, 63250

GJM/NGM/SS/5.11.2015-4P-6C

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and
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