BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.10.2015

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.19378 of 2015
and
M.P.(MD).No.1 of 2015

Tvl.Kamatchi Agencies,
Represented by its Proprietor
Thiru.P.Bose,
Old No.97/35-36, New No.97, Pazhankottai Road,
Kalugumalai 626553.
Tuticorin District. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by it's Secretary to
Government Department of Commercial Taxes,
Fort St. George, Beach Road,
Chennai 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai- 600 005.

3.The Commercial Tax Officer (M)-II,
C.T.Buildings, Ettayapuram Road,
Kovilpatty, 628 501
Tuticorin District.

4.Assistant Commissioner-111,
C.T.Buildings, Beach Road,
Tuticorin. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records of the Proceedings by the third respondent issued in TIN No.33625942116/2010-11 dated 29.09.2015 received by the petitioner on 05.10.2015 issued by the third respondent quash the same and to direct the third Respondent to verify the genuiness of the transactions with his counterpart I.e., the fourth respondent and to accord a personal hearing after issuing notice and then to pass fresh order if any for the assessment year 2010-2011.

For Petitioner : M/s.A.S.Mujibur Rahman
For Respondents : Mr.R.Karthikeyan
Additional Govt.Pleader

COMMON ORDER

The writ petition has been filed praying for a Writ of Certiorari to call for the impugned proceedings of the third respondent in 33625942116/2010-11 dated 29.09.2015 and quash the same.

2. The petitioner is a registered dealer in Indian Oil under the Tamil Nadu Vat Act, 2006 and an assessee in the books of the third respondent with TIN 33625942116. He purchased goods such as Motor Oil etc from Tvl.C.M.Auto Mobiles, No.4/3A, Thiruchendur Road, Thoothukudi-628 003. The TIN No. of the dealer was 33675920991 CST No.473344 previously which has been issued by the fourth respondent. Since the dealer has stopped their business the dealer's TIN No.and SCT No. were cancelled by the fourth respondent, The Assistant Commissioner III, Tuticorin with effect from 11.01.2010 onwards. Further Tvl.C.M.Auto Mobiles, No.4/3A, Thiruchendur Road Thoothukudi obtained a new TIN No.and CST No.3336592410 and 482952 respectively from the fourth Respondent which came to effect from 06.1.2010 onwards. The cancellation of the old TIN No. and the old CST No. and the assignment of the new TIN No. and CST No. could be very well seen and downloaded from the inter Net as well from the intra Net of the department Web site. WWW.com tn vat.com. In the annexure of the Form-I monthly return submitted to the third respondent, the petitioner has mistakenly noted the old TIN No.33675920991 instead of the New TIN No.3336592410 issued by the fourth Respondent. This has accrued only due to over sight of the clerk who typed the Form I monthly return and submitted them through E nett. To a great surprise, the third respondent issued a notice in TIN 33625942116/2010-11, dated 10.08.2015 proposed to revise as per the Section 19(5) of the Act. The third respondent has proposed to levy purchase tax on the purchase turnover or Rs.4,03,741/- X 12.5% treating that the purchaser were purchased from the person whose TIN no was cancelled. The petitioner was sick from 12.08.2015 to 04.10.2015 and could not attend his routine official duties. Therefore, he could not submit the detailed reply and objection to the third respondent. The third respondent is having the internet and as well as intra nett facilities in his office and in all the departmental offices of his counterparts. Therefore, in no minute if the third Respondent touches the computers of his office the third respondent could very well verify that the mistake in only quoting the old TIN No. of the seller instead of mentioning the new TIN No. in the return in Form I. Therefore, the action taken by the third respondent is no way connected with the Section 19 (15) of the TN VAT Act 2006. There is no case of repayment of the input tax amount to the third respondent. The third respondent has not followed the basic principles while proposing and while passing the order in his Proceedings issued in TIN No.TIN 33625942116/2010-11, dated 29.09.2015 received by the petitioner on 05.10.2015. The petitioner has accounted for the entire transactions except quoting of the old TIN No. of the consignor. Hence, challenging the said impugned orders, the present Writ Petition has been filed.

3. The learned counsel for the petitioner submitted that without providing an opportunity of hearing, the impugned orders have been passed. Hence, the impugned orders are liable to be set aside.

4. The learned Government Advocate appearing for the respondent reiterating the counter affidavits filed by him has vehemently opposed the submission of the learned counsel for the petitioner and prayed for the dismissal of the writ petition stating that the impugned order does not suffer from any illegality.

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

The petitioner firm is directed to remit 10% each of the disputed tax in question in the Writ Petition to the respondents within a period of four weeks from the date of receipt of a copy of this order. On such payment, the orders impugned in the Writ Petition stands set aside and the 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 petition is closed.

Sd/-
Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary, State of Tamil Nadu
Government Department of Commercial Taxes,
Fort St. George, Beach Road, Chennai 600 009.

2.The Commissioner of Commercial Taxes,
2^{nd} Floor, Elilagam, Chepauk, Chennai- 600 005.

3.The Commercial Tax Officer (M)-II,
C.T.Buildings, Ettayapuram Road,
Kovilpatty, 628 501, Tuticorin District.

4.Assistant Commissioner-111,
C.T.Buildings, Beach Road, Tuticorin.

+1cc to Mr.A.S.Mujibur Rahman, Advocate Sr.No.63618
+1cc to The Special Government Pleader SR.No.63417

akm/27.11.2015 /3p-7c/

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