BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.10.2015**

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.19775 of 2015
and
M.P.(MD).No.1 of 2015

Tvl. Kumar Super Market,
Represented by its Partner
Thiru.A.Saravanan ... Petitioner

Vs.

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

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

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

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in TIN.33095863013/2014-2015, dated 28.09.2015 issued by the third respondent and quash the same and to direct the third respondent to cross-examine the seller's Assessing officer, issue a revised notice accord a personal hearing after issuing notice and then to pass fresh order if any for the assessment year 2014-2015.

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

ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings in TIN.33095863013/2014-2015, dated 28.09.2015 issued by the third respondent and quash the same and to direct the third respondent to cross-examine the seller's Assessing officer, issue a revised notice accord a personal hearing after issuing notice and then to pass fresh order if any for the assessment year 2014-2015.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, the Writ Petition itself is taken up for final disposal.

4. The petitioner Concern is a registered dealer under the Tamil Nadu VAT Act, 2006 and an assess in the books of the third respondent in TIN 33095863013. The petitioner had filed monthly returns in Form I under TNVAT Act, 2006 to the third respondent. The assessment for the year 2014-2015, has been finalised by the third respondent by accepting Form I returns filed by the petitioner as per the provisions laid down under Section 22(2) of the TNVAT Act. While the matter stood thus, the third respondent had issued a notice, dated 06.08.2015 proposing to levy tax on a turnover of Rs.22,02,538/- for the reason that the consignee's/seller's Registration certificate has been cancelled and the petitioner concern is liable to pay VAT Tax of Rs.82,555/- for the above turnover. According to the petitioner, the third respondent had not at all cross-examined the petitioner's seller and has simply downloaded the figures of his intranet and issued the impugned notice. Thereafter, to the shock and surprise of the petitioner, the third respondent has passed the impugned order, dated 28.09.2015. Hence, the challenging the said order, the present Writ Petition has been filed.

5. The learned counsel for the petitioner submitted that without providing an opportunity of hearing, the impugned order has been passed. Hence, the impugned order is liable to be set aside.

6. 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 petition stating that the impugned order does not suffer from any illegality.

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

The petitioner firm is directed to remit 10% of the disputed tax in question to the third respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition shall stand set aside and the third 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, these Writ Petitions stand 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,
Chennai 600 009.

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

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

+1cc to Mr.A.S.Mujibur Rahman, Advocate Sr.No.64040

akm/04.11.2015 /3p-5c/

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