BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :29.04.2015

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THE HONOURABLE **MR.JUSTICE.R.MAHADEVAN**

W.P(MD).No.7210 of 2015
and
M.P.(MD).No.1 of 2015

Tvl.Royal Colour Lab and Studio,
rep.by its Partner Thiru R.Sivakumar,
D.No.2-A, Illayarresandal Road,
Kovilpatty,
Tuticorin District. ... Petitioner

Vs

1.The State of Tamil Nadu,
rep.by its Secretary to Government
Department of Commercial Taxes,
Fort.St.Geroge,
Beach Road Chennai-9

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

3.The Deputy Commercial Tax Officer-II,
C.T.Buildings, Ettayapuram Road,
Kovilpatty,
Tuticorin District. ... Respondents

This Writ Petition has been filed praying for a Writ of Certiorarified Mandamus to call for the records relating to the Assessment order passed by the 3rd Respondent in TIN No.assigned to the Petitioner 33495942333 under TN Vat Act 2006 for the assessment year 2012-2013 dated 8.12.2014 certified copy received by the petitioner on 22.04.2015 and quash the same and to direct the 3rd respondent afford an opportunity of being heard and pass the order of assessment for the assessment year 2012-2013.

For petitioner : Mr.A.S.Mujibur Rahman

For respondents : Mr.A.Muthukaruppan
Addl.Govt.Pleader

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ORDER

The petitioner has come forward with this Writ Petition praying for a Writ of Certiorarified Mandamus to call for the records relating to the Assessment order passed by the 3rd Respondent in TIN No. 33495942333 under TN Vat Act 2006 for the assessment year 2012 - 2013 dated 8.12.2014, certified copy received by the petitioner, on 22.04.2015, and quash the same and to direct the 3rd respondent, to afford an opportunity of being heard to the petitioner and pass the orders of assessment for the assessment year 2012-2013 afresh.

2. Mr.A.Muthukaruppan learned Addl.Govt.Pleader takes notice for the official respondents.

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

4. The learned counsel appearing for the petitioner would submit that without providing an opportunity of hearing to the petitioner, the order of assessment has been passed, which is violating the principals of natural justice. Hence, he seeks indulgence of this Court,

5. The learned Govt.Advocate would submit that the opportunity of hearing sought by the petitioner is nothing but to drag on the proceedings further. Hence, he prayed for the dismissal of this Writ Petition.

6. The only ground on which the impugned order assailed by the petitioner in this Writ Petition is that without there being an opportunity of hearing to the petitioner, the assessment order has been passed by the respondent. Therefore, he seeks one more opportunity to file his objections to the notice issued by the third respondent. Further, the learned counsel appearing for the petitioner would submit that no sales tax is payable on the supply of printed materials which were printed by the petitioner on the orders received from their customers and according to their specification the petitioner had printed the goods. This Court, following the decisions of the Hon'ble Supreme Court, reported in ***73 STC 1 (State of Tamil Nadu Vs. Anand Viswanathan) and 97 STC 489 (State of Tamil Nadu Vs Gunadundari Modern Art Printers)*** has held that such transaction are to be held as ''works contract'' and not liable to be taxed under TNGST Act 59. To sum up, an opportunity of hearing is a must in such type of cases.

7. In view of the facts of the circumstances of the case, to give quietus to this issue, the order impugned in this Writ Petition stands set aside and the matter is remitted back to the third respondent to pass an assessment order in the following manner:-

a. The opportunity of hearing shall be given by the respondents, to the petitioner within a period of two weeks from the date of receipt of a copy of this order.

b. As soon as the petitioner gets the opportunity of bearing heard from the respondents , petitioner shall file his objections along with the necessary documents, within a period of two weeks from the date of availing such opportunity.

c. The third respondent is directed to pass appropriate assessment orders, after considering the objections to be filed by the petitioner. within a period of two weeks.

With the above direction, this Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To
1.The Secretary to Government
The State of Tamil Nadu,
Department of Commercial Taxes,
Fort.St.Geroge,
Beach Road Chennai-9

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

3.The Deputy Commercial Tax Officer-II,
C.T.Buildings, Ettayapuram Road,
Kovilpatty,
Tuticorin District.

+1cc to M/S.A.S.Mujibur Rahman, Advocate in SR.No 23525

+1cc to Special Government Pleader in SR.No. 24661.

TS/17.06.2015/3P-6C

W.P(MD).No.7210 of 2015

29.04.2015