IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2016

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.32083 of 2015
and
M.P.Nos.1 and 2 of 2015

M/s.Bismillah Industrial Steel Suppliers
rep. by its Partner S.Kaleelullah ... Petitioner
Chennai-50.

Vs

1. The Assistant Commissioner
(Commercial Taxes)
Office of the Assistant Commissioner,
Korattur Assessment Circle,
No.52/98, Yadava Street,
Padi, Chennai 600 050.

2.The Commercial Tax Officer,
Korattur Assessment Circle,
No.58, Yadava Street,
Padi, Chennai 600 050. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus after calling for the records from the 2nd respondent pertaining to the proceedings in Assessment No.33631441262/2014-15, quash the order dated 19.08.2015 and consequently direct the respondents from demanding any amount from the petitioner towards VAT for the assessment year 2014-15.

For Petitioner : Ms.S.Narmadha Sampath
For Respondents : Mr.S.Manoharan Sundaram, AGP

O R D E R

The petitioner has filed this writ petition, challenging the assessment order dated 19.08.2015 passed by the second respondent relating to the year 2014-15 and consequently directing the respondents not to demand any amount from the petitioner towards VAT for the year in question.

2.According to the petitioner, the petitioner is a registered dealer under the TNVAT Act 2006 and is carrying on the business of import of iron and steel scrap from other countries. While so, the first respondent issued a notice dated 16.02.2015 calling upon the petitioner to file details related to certain imports and also to submit their objections along with documentary evidence with regard to the purchases made. On receipt of the same, the petitioner approached the second respondent with documentary evidence along with reply as directed. However, the second respondent by proceedings dated 19.08.2015 passed an assessment order for the year in question without considering the reply and imposed tax and also penalty at the rate of 150%. Aggrieved against the same, the petitioner is before this court.

3.Learned counsel for the petitioner submitted that no pre-assessment notice was issued to the petitioner, before passing such an assessment order and hence, the impugned order is arbitrary, illegal and in violation of the principles of natural justice. Further, learned counsel for the petitioner submitted that there was no suppression of purchases made by the petitioner as alleged by the assessing officer. In that event, imposition of penalty at the rate of 150% on the petitioner is unwarranted.

4.On the other hand, Mr.S.Manoharan Sundaram, learned Additional Government Pleader who took notice for the respondents, submitted that after issuing the pre-assessment notice to the petitioner, the second respondent passed the impugned order and therefore, no interference is required for the same.

5.Heard both sides and perused the materials available on record.

6.It is the specific case of the petitioner that for the assessment year 2014-15, no pre-assessment notice was served on the petitioner. Whereas, the respondents claimed that a notice was issued to the petitioner. However, there was no reference about the issuance of notice and service of the same on the petitioner in the impugned order dated 19.08.2015, which would clearly demonstrate that no pre-assessment notice was served on the petitioner before passing the assessment order for the year in question. Therefore, in my considered view, the impugned order is in violation of the principles of natural justice. On this score alone, the same is liable to be set aside.

7.Accordingly, the impugned order dated 19.08.2015 passed by the second respondent for the assessment year 2014-15 is set aside and the matter is remitted back to the authority concerned for passing fresh assessment order, after issuing pre-assessment notice. The Assessing Officer is directed to issue pre-assessment notice for the year in question to the petitioner within two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner is directed to file their objections within two weeks thereafter. On filing such objections, the assessing officer shall consider the same and pass fresh assessment order on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. The said exercise shall be completed within a period of six weeks thereafter.

8.The writ petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Assistant Commissioner (Commercial Taxes)
Office of the Assistant Commissioner,
Korattur Assessment Circle,
No.52/98, Yadava Street,
Padi, Chennai 600 050.

2.The Commercial Tax Officer,
Korattur Assessment Circle,
No.58, Yadava Street,
Padi, Chennai 600 050.

+1cc to Mr.Narmadha sampath, Advocate, S.R.No.34
+1cc to the Government Pleader, S.R.No.143

W.P.No.32083 of 2015

gj(CO)
srg(12/02/2016)