IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition No.30708 of 2016
& W.M.P.No.26605 of 2016

M/s.Modern Agencies
Rep by Proprietor
No.37, Kasthuribai Street
Panruti
Villupuram District
.. Petitioner

Vs.

The Commercial Tax Officer
Panruti (Town) Assessment Circle
Panruti- 607 106 .. Respondent

Petition filed under Article 226 of the Constitution of India for the issuance of writ of Certiorari calling for the records on the files of the respondent in TIN No.33584481124/2011-12 dated 22.12.15 and quash the same being illegal, invalid, without jurisdiction and violated the principles of natural justice and contrary to the law.

For Petitioner : Mr.D.Vijayakumar

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.D.Vijayakumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, who accepts notice on behalf of the respondent and with the consent of either side, the writ petition itself is taken up for disposal.

2. The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), for the year 2011-12. The pre-revision notice itself was based upon a website report with regard to the purchase details from the other end dealer, namely, one M/s.R.D.Mehra Traders. The petitioner is a small dealer with a turnover of less than Rs.5 lakhs. On receipt of the notice, the petitioner was shocked to find that the website shows as if they have effected transaction with the said M/s.R.D.Mehra Traders, when according to the petitioner, there was no such activity done by them with the said dealer. Therefore, they sent an objection stating that they have got nothing to do with the transaction. However, the respondent has completed the assessment by stating that the website details show the transactions and the burden of proof lies on the petitioner.

3. It is to be pointed out that the petitioner is a dealer registered in Panruti and they appear to be a very small dealer. Therefore, the assessing officer could have afforded an opportunity of personal hearing to the petitioner and made some verification with the other end dealer's assessing officer and if some more materials are available, then the petitioner could have been confronted or in the alternative, the respondent could have issued notice to the said M/s.R.D.Mehra Traders through its assessing officer and made an enquiry. However, these efforts appear to have not been taken.

4. Considering the fact that the assessment pertains to 2011-12 and the petitioner being a small dealer, this Court is of the view that the assessment should be re-done by the respondent, after conducting due enquiry. Accordingly, instead of setting aside the impugned order, the petitioner is directed to treat the impugned order as a show cause notice and submit further explanation/objection and try to gather some more details and place the same before the respondent. The said explanation/objection should be filed within a period of two weeks from the date of receipt of a copy of this order. On receipt of such explanation/objection, the respondent shall conduct an enquiry, after affording an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law and pass a speaking order within a period of four weeks from the date on which the explanation/objections are received. Till then, no coercive action shall be initiated against the petitioner for recovering the dues as assessed in the impugned order.

5. The writ petition is disposed of accordingly. No costs. Connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk
To
1. The Commercial Tax Officer
Panruti (Town) Assessment Circle
Panruti- 607 106

1 cc to Mr.S.Thirumavalavan, Advocate, sr.50689
1 cc to Special Government Pleader,(Taxes) sr.50131
1 cc to Mr.D.Vijayakumar, Advocate, sr.50111

W.P.No.30708 of 2016

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