IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.23295 OF 2003 &
W.P.M.P.No.28773 of 2003

M/s Samyu Motors (P) Ltd.,
rep. by its Director
Mrs.Urmila Sathyanarayanan .. Petitioner

vs.

The Commercial Tax Officer
Kilpauk Assessment Circle
Choolaimedu
Chennai 600 094. .. Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari, to call for the records on the file of the respondent in his proceedings in TNTEMV Asst.No.1/ 1997-98 (TNGST No.1120762/1997-98) dated 18.07.2003 and quash the same.

For Petitioner : Mrs.R.Hemalatha
For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mrs.R.Hemalatha, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.In this Writ Petition, the petitioner who is a dealer in Automobiles, has challenged the penalty under section 15 of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Act 1990 (herein after referred to as the Act).

3.It may not be necessary to go into the merits of the contentions advanced by the petitioner as well as the learned Additional Government Pleader, as the petitioner challenges the impugned order on the ground of violation mandatory procedure stipulated under sub-section (2) of Section 15 of the Act.

Section 15 of the Act, deals with penalty. Under the said provision, penalty can be levied in two circumstances, firstly, when a person liable to pay tax under the said Act failed to comply with any of the provisions of the Act, and secondly when a person fails to pay tax within the time allowed under section 10 of the Act. In both the circumstances, the Assessing Officer before imposing penalty by passing the order in writing, should afford an opportunity of personal hearing to the petitioner. This opportunity is granted under the Statute itself. Therefore, the respondent could not have passed the impugned order, without affording an opportunity of personal hearing.

4.It may be true that the respondent has received the petitioner's objection, which is evident from paragraph No.11 of the impugned order. But, that would not by itself mean that the Statutory provision has been complied with by the respondent. The reason as to why the Statute provides for an opportunity of personal hearing is to enable the assessee to clarify all issues before the Assessing Authority, since the power to impose penalty is conferred on the Assessing Officer and the power should be exercised in a quasi judicial manner by exercising discretion properly. Therefore, the opportunity of personal hearing is not an empty formality, but a mandatory requirement as contained in the Statute.

5.Admittedly, the respondent while passing the impugned order did not afford an opportunity of personal hearing. Therefore, on this short ground alone, the impugned order is liable to be set aside.

6.Accordingly, the Writ Petition is allowed and the impugned order is set aside. However, liberty is granted to the respondent to initiate fresh proceedings after the outcome of the challenge to the validity of the statutory provision is decided by the Hon'ble Supreme Court. In the event, the Hon'ble Supreme Court upholds the validity of the enactment, then the respondent will be entitled to issue notice and proceed further in accordance with law and the petitioner will not be entitled to plead limitation, as this order empowers the Assessing Authority to initiate action, after the decision of the Hon'ble Supreme Court. No costs. Consequently connected Miscellaneous Petition is closed.

rpa

s/d-
Assistant Registrar(CS-VII)

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Kilpauk Assessment Circle
Choolaimedu
Chennai 600 094.

+ 1 cc to Spl. Govt. Pleader (T) SR 45966

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