BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.14971 of 2016
and
W.M.P(MD)No.11034 of 2016

Tvl. Malliga Traders
rep. by its Proprietorix Tmt. P.Malliga
524, KVS Complex,
Sattur, Viruthunagar District. ... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by its Secretary to Government,
Department of Commercial Taxes
and Registration,
Fort St. George,
Chennai - 600 009.

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

3.The Commercial Tax Officer (Addl),
Sattur, Viruthunagar District. ... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the revision of Assessment orders passed by the 3rd respondent in TIN No.33935780683/2014-15 dated 15.06.2016 (received by the petitioner on 22.06.2016) and quash the same and to direct the 3rd respondent to afford an opportunity of personal hearing.

For Petitioner : Mr.M.MD.Ibrahim Ali
For Respondents : Mr.R.Karthikeyan, AGP

ORDER

Tvl. Malliga Traders represented by its Proprietorix Tmt. P.Malliga has challenged the impugned proceedings issued by the Commercial Tax Officer (Additional), Sattur, Viruthunagar District in TIN No.33935780683/2014-15 dated 15.06.2016, which is appealable before the Appellate Deputy Commissioner (CT), Virudhunagar within 30 days of receipt of that order.

2.The petitioner is a registered dealer under TN VAT Act 2006 and also an assessee in the books of the 3rd respondent. The petitioner has been carrying on a business in match raw materials. After purchasing the raw materials from other dealers, the petitioner submits the returns to the 3rd respondent as per the provisions laid down under 7(1)(a) of the TN VAT rules. While so, the 3rd respondent, the Commercial Tax Officer (Additional), Sattur, has issued a notice on 23.05.2016, calling upon the petitioner to submit her reply. Though the said notice was received by the petitioner on 24.05.2016, she could not submit her reply in time, since she was sick from 23.05.2016 to 08.08.2016. As a result, the third respondent passed the Assessment proceedings in TIN No.33935780683/2014-15 dated 15.06.2016 and the same was received by her on 22.06.2016. Therefore, the petitioner is before this Court for the relief as stated supra.

3.Learned counsel appearing for the petitioner would submit that without making any assessment as per the provisions laid down under Section 22(2) of the Act and again without even giving personal hearing, the third respondent has passed the final assessment order. Therefore, the impugned order is liable to be set aside.

4.Adding further, the learned counsel for the petitioner would submit that neither any document was relied upon by the authority while passing the impugned order nor any connected papers were furnished to the petitioner. Therefore, the impugned order is liable to be set aside.

5.This Court is not able to follow the submission made by the learned counsel for the petitioner for the reason that when the Commercial Tax Officer (Additional), Sattur, has issued notice on 24.05.2016 calling upon the petitioner to submit her reply as to why the notice should not be confirmed, after receiving the same, the petitioner has to submit her reply. Since the petitioner has not given any reply, the third respondent has no other option except to pass the present impugned order. The petitioner has not even sought for time to produce the document. Therefore, the petitioner has to file an appeal against the impugned order before the Appellate Deputy Commissioner (CT), Virudhunagar. Therefore, this Court, finding that the impugned order is an appealable nature, is not inclined to entertain the writ petition. Accordingly, this writ petition fails and the same is dismissed. However, a liberty is given to the petitioner to file an appeal before the appropriate forum, within a period of three weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To

1.The Secretary to Government,
Department of Commercial Taxes
and Registration,
Fort St. George,
Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor,
Exhilagam,
Chepauk,
Chennai – 600 005.

3.The Commercial Tax Officer (Addl),
Sattur, Viruthunagar District.

Copy to: The Section Officer,
E.R Section,
Madurai Bench of Madras High court, Madurai

+1CC to M/S. Mohamed Ibrahim Ali, Advocate, SR.No. 45138
+1CC to the Special Government Pleader, SR.No. 45366

W.P.(MD)No.14971 of 2016
16.08.2016.

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