BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.14973 of 2016
and
W.M.P(MD)No.11036 of 2016

Tvl. S.S.Plastics,
rep. By its Partner Thiru R.S.S.Ravi
No.4/67, Kulloorchandai Road,
Virudhunagar 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,
Ezhilagam,
Chepauk,
Chennai - 600 005.

3.The Assistant Commissioner (CT)-3,
C.T. Building, Madurai Road,
Virudhunagar District.

4.The Commercial Tax Officer Sattur
Road Roving Squad,
C.T. Building, Madurai Road,
Virudhunagar 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 his proceedings TIN No.33055762640/2014-15 dated 28.07.2016 (received by the petitioner on 09.08.2016) and quash the same and to direct the 3rd respondent to afford an opportunity of personal hearing and pass fresh orders for the assessment year 2014-2015.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Mr.R.Karthikeyan, AGP

ORDER

Tvl.S.S.Plastics represented by its Partner Thiru. R.S.S.Ravi has challenged the impugned proceedings issued by the third respondent, namely, the Assistant Commissioner (CT)-3, Virudhunagar District in TIN No.33055762640/2014-15 dated 28.07.2016.

2.The petitioner is a registered dealer under the Tamil Nadu VAT Act 2006 and also an assessee in the books of the 3rd respondent. The petitioner has been purchasing waste plastic materials from the registered dealers within the State. After purchasing the materials from other dealers, the petitioner submits the returns in Form-I 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 Assistant Commissioner (CT)-3, Viruhdunagar District, has issued a Pre-Assessment notice on 13.06.2016. Though the said notice was received by the petitioner on 13.06.2016, he could not submit his reply in time. As a result, the third respondent passed the Assessment proceedings in TIN No.33055762640/2014-15 dated 28.07.2016 and the same was received by her on 09.08.2016. 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 third respondent/Assistant Commissioner (CT)-3, Virudhunagar District, has issued notice on 28.07.2016 calling upon the petitioner to submit his reply as to why the notice should not be confirmed, after receiving the same, the petitioner has to submit his 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(AS)

/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, Ezhilagam, Chepauk,
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3.The Assistant Commissioner (CT)-3,
C.T. Building, Madurai Road,
Virudhunagar District.

4.The Commercial Tax Officer Sattur
Road Roving Squad,
C.T. Building, Madurai Road,
Virudhunagar District.

+1 cc to M/S.MOHAMMED IBRAHIM ALI, Advocate SR.No.45137
+1 cc to Special Government Pleader SR.No.45364

Copy to:
The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

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16.08.2016.

SMA/CK/4.11.2016:3P/8C