BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.11.2016

C O R A M

THE HON'BLE DR.JUSTICE S.VIMALA

W.P.(MD) No.20917 of 2016 and
W.M.P.(MD) No.14925 of 2016

Tvl.New Kasim Stores,
Represented by its Proprietrix,
A.Yasmeen Begam,
Karaikudi. .. Petitioner

-vs-

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi-630 001. .. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN.33805483207/2013-14 dated 30.08.2016 and quash the same.

For petitioner ... Mr.R.Rooban
For Respondents ... Mr.R.Karthikeyan
Addl. Govt. Pleader

O R D E R

This petition has been filed, seeking to quash the impugned order dated 30.08.2016 passed by the 2nd respondent in TIN.33805483207/2013-14, by which, the 2nd respondent confirmed the proposal based on the department website report without verifying the books of account of the petitioner and also without considering the explanation given by the petitioner and directed the petitioner to pay the balance tax due for 2013-2014

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3. The case of the petitioner is that the sale turn over of the petitioner concern has been filed through e-filing as per the procedure contemplated by the respondents; that the 2nd respondent issued a notice dated 22.07.2016, proposing to revise the assessment for the year 2013-2014; that the petitioner vide reply dated 01.08.2016 clarified that though they have reported and paid tax at the rate of 5%, the commodity code for pipes and tubes / PVC Pipes has been wrongly mentioned as 301 and 329 (pertaining to Electric Motors) instead of 2100 in the annexure to the return. PVC pipes (Commodity Code 2100) are taxable only at the rate of 5%, whereas 14.5% has to be paid towards tax in respect of Code Nos.301 and 329 (Electric Motors); that while making entry in the computer, it has been mistakenly mentioned the code number as 301 and 329 and the petitioner has also clarified the said position to the respondents by way of reply / objection dated 01.08.2016; that while considering the objection filed by the petitioner, the 2nd respondent has stated that the petitioner concern had sold their goods taxable at the rate of 14.5% and reported the Commodity Code No.301 and 329 in all their monthly returns and they have failed to pay tax at the rate of 14.5% for the year 2013-2014, challenging the same, the petitioner is before this Court.

4. Learned counsel for the petitioner has produced an additional typeset of papers, from which it is evident that in respect of details of purchase / transfer value during the month of April, 2013 in Annexure-I, all the entries starting from Sl.Nos.1 to 30, the commodity code has been entered as 329. When the petitioner concern raised the issue of wrong entry, it is for them to produce records.

4.1. Learned counsel for the petitioner would submit that all the details and relevant documents were produced before the 2nd respondent, but it was not considered.

5. Once relevant documents have been handed over to the 2nd respondent for verification, they should have either called upon the petitioner for enquiry or documents should have been verified before passing the impugned order. Thus, it is apparent that the principle of natural justice has not been followed in this case and opportunity of personal hearing was not afforded to the petitioner. Therefore, the impugned order is liable to be set aside.

6. Accordingly, this writ petition is allowed. The impugned order dated 30.08.2016 is set aside and the matter is remitted back to the 2nd respondent for fresh consideration after calling for complete set of relevant documents from the petitioner with regard to the sales and purchase made during the year 2013-2014. Based on the documents and after scrutinizing the same, the 2nd respondent shall pass suitable orders on merits and in accordance

with law within a period of six weeks from the date of receipt of a copy of this order. It is made clear that after receipt of a copy of this order, the 2nd respondent shall issue notice to the petitioner, calling upon them to produce all the required records in order to clarify the issue raised in this petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To:

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi-630 001.

+1 CC to M/s.B.ROOBAN, Advocate, SR No.64731

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.64962

W.P.(MD) No.20917 of 2016
01.11.2016

SH/KM:16.12.2016:3P/5C