BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.11.2016

CORAM :

THE HON'BLE DR. JUSTICE S.VIMALA

Writ Petition (MD) No.22174 of 2016
& W.M.P.(MD) Nos.15882 & 15883 of 2016

Bhabi Traders, Rep. by its Proprietor, T.Prem,
No.11/80, Main Road,
Swamiyarmadam & Post,
Kanyakumari District ... Petitioner

Vs.

The Commercial Tax Officer,
Thuckalay at Kattathurai Post,
Kanyakumari District 629 158 ... Respondent

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN No.33626163955/2010-11, dated 06.10.2015, to quash the same as illegal, invalid and in violation of the principles of natural justice and consequently to direct the respondent to grant the petitioner the details of material and evidence for proposing the revision of assessment for the assessment year 2010-11 and after granting to the petitioner an opportunity to submit reply and a personal hearing, pass orders according to law..

For Petitioner : Mr. M.Azeem
For Respondent : Mr. R.Karthikeyan, AGP.,

ORDER

This writ petition has been filed by the petitioner, challenging the order, dated 06.10.2015, on the ground that the order is violative of the principles of natural justice and sought for a consequential direction directing the respondent herein to provide material and substantial details for effectively responding to the revision of assessment for the year 2010-11.

2. Mr.R.Karthikeyan, learned Additional Government Pleader, accepts notice on behalf of the respondent. By consent of the learned counsel for both sides, the writ petition is taken up for

final disposal at the admission stage itself.

3. The brief facts:-

For the assessment year 2010-11, the respondent has issued a pre-revision notice, dated 10.08.2015, alleging that the petitioner suppressed the high sea purchases to the extent of Rs.90,04,800/-. By adding 20% gross profit, the sale value was proposed to be determined at Rs.1,08,05,760/- and penalty under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter will be referred to as "the Act") was proposed to be levied.

3.1. The petitioner submitted a reply denying the alleged purchases. On 07.08.2016, the petitioner received a demand notice, dated 25.07.2016, from the respondent making a demand for the payment of tax at Rs.13,50,720/- and a penalty of Rs.20,26,080/-, totalling Rs.33,76,800/-.

3.2. It is the claim of the petitioner that the petitioner was not served with any assessment order or demand notice. Therefore, the petitioner made a representation dated 09.08.2016, requesting the respondent for the grant of assessment order, demand notice for 2010-11 and other details. Thereafter, the petitioner moved an application under the Right to Information Act and got the required details.

4. It is the specific grievance of the petitioner that the details of sellers were not disclosed at the initial stage and that has been disclosed only in the assessment order. It is the further grievance of the petitioner that if the names of the dealers are disclosed in the pre-assessment notice, it would have given proper opportunity to the petitioner to effectively respond to the notice. When it is stated, as a first time, in the assessment order, effective opportunity to respond to the notice is lost. So contending, the petitioner makes a plea for another opportunity to effectively contest the case and for a direction to the respondent to provide sufficient details, so that the petitioner can effectively contest the case.

5. The learned Additional Government Pleader appearing for the respondent would submit that there must be a direction to the petitioner to deposit at least 50% of the total amount (penalty and taxes) and subject to that condition, there may be an opportunity of hearing to the petitioner.

6. In reply to the said submission, the learned counsel for the petitioner would point out that the petitioner has already paid a sum of Rs.10 lakhs, on 14.02.2015 and the details of the credit is not furnished to petitioner.

7. In view of the above position, it is clear that the payment made by the petitioner on 14.02.2015 is liable to be adjusted as against the amount to be paid, but subject to proof of payment

being shown / produced before the respondent.

8. Recording the assurance made by the petitioner that he has already paid a sum of Rs.10 lakhs, the impugned order, dated 06.10.2015, is set-aside and the respondent is directed to provide sufficient materials to the petitioner as well as opportunity of hearing, which includes the hearing with reference to the documents, which are ordered to be furnished to the petitioner and to take further decision, in accordance with law, within a period of four weeks.

9. With the above directions, this writ petition stands disposed of. No costs. Consequently, the connected WMPs are closed.

Sd/-
Assistant Registrar( )

/True copy/

Sub Assistant Registrar

To
1.The Commercial Tax Officer,
Thuckalay at Kattathurai Post,
Kanyakumari District 629 158

srk
AE/CM MSA/20.02.2017/3P/2C

W.P.(MD) No.22174 of 2016
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