IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.17054 of 2017
and W.M.P.No.18513 of 2017

M/s.S.S.Enterprises,
Rep. by its Proprietor Mr.M.Thajutheen
No.210/2, Chennai Salai,
L.N.Puram, Panruti. .. Petitioner

..Vs..

The Commercial Tax Officer,
Panruti (Rural). .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records of the respondent in TIN:33434501140/2012-13 dated 05.12.2014, quash the same. The impugned order is challenged on the ground of jurisdiction to impose penalty and violation of principles of natural justice.

For Petitioner : Mr.V.Sundareswaran

For Respondent : Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.V.Sundareswaran, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent. With the consent on either side, the writ petition itself is taken up for disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) carrying on business in Iron, Steel and Cement. In this writ petition, the petitioner has challenged an order dated 05.12.2014 which is an assessment order under the provisions of the TNVAT Act for the year 2012-13. By the impugned order, the respondent has levied penalty of Rs.1,22,865/- under Section 40(2)(ii) of the TNVAT Act. Challenge to the impugned order though belatedly is on the ground that before imposing such penalty no opportunity of being heard was given by the respondent.

3.On a perusal of the impugned proceedings, it is seen that the petitioner did not file their objections to the show cause notice. The Assessing Officer ought to have issued a notice calling upon the petitioner to appear in person as sub-section (2) of Section 40 of the TNVAT Act mandates that the dealer should be given reasonable opportunity of being heard. Giving an opportunity to submit objections and giving an opportunity of being heard are two different aspects. Therefore, even though the order of assessment was passed in the year 2014, considering the fact that it has been passed in violation of the mandatory statutory provision and taking note that the petitioner is a very small dealer, this Court is inclined to remand the matter for fresh consideration.

4.Accordingly, the writ petitioner is disposed of by directing the petitioner to treat the impugned order as a show cause notice and submit their objections within a period of fifteen days from the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the petitioner and final orders to be passed in accordance with law. Till such orders are passed, no coercive action shall be initiated for recovery of the penalty as quantified in the impugned assessment order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS III )

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer,
Panruti (Rural).

+ 1 cc to M/s.Sundareswaran Advocate,SR.47912
+ 1 cc to The Govt.Pleader, SR.47632

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SKS(CO)
NR 26/07/2017