IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13354 of 2004

Sri Balaji Traders, Rep. by Sri K.Krishnan,
Proprietor, No.48/1, Sarkar Periapalayam,
Tirupur - 641 607. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Perundurai Assessment Circle,
Perundurai, Erode District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India to issue a WRIT OF CERTIORARIFIED MANDAMUS calling for the records on the files of the respondent in TNGST 2921108/95-96 dated 08.03.2004 received on 19.03.2004 and quash the same as being unconstitutional, without jurisdiction, authority of law, violative of principles of natural justice, contrary to the directions of the Tamil Nadu Taxation Special Tribunal in Original Petition No.1589/99 dated 17.12.1999 and thereafter directing the respondent to pass orders afresh in accordance with the directions of the Special Tribunal in O.P.No.1589/99 dated 17.12.1999 and after considering and complying with the request for being granted copies of records and opportunity requested as per letters dated 19.11.1999, 10.12.1999, 17.12.1999, 04.01.2000 and 10.09.2001.

For Petitioner : Mr.V.Srikanth

For Respondent : Mr.K.Venkatesh,
Government Advocate.

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O R D E R

Heard Mr.V.Srikanth, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate for the respondent.

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2.The petitioner is before this Court challenging an order of assessment dated 08.03.2004 under the provisions of the Tamil Nadu General Sales Tax Act (TNGST Act) for the year 1995-1996. It may not be necessary for this Court to go into the merits of the assessment as the challenge to the impugned proceedings is on certain technical grounds. The allegation against the petitioner is that the transaction effected by them were bogus transactions with bill traders. When an action was initiated under the provisions of the TNGST Act, the petitioner approached the Tamil Nadu Taxation Special Tribunal and filed an original petition to set aside the proceedings of the respondent dated 30.11.1999 as if contrary to the principles of natural justice and to direct the respondent to consider the compliance letters and representation dated 19.11.1999 and 10.12.1999 submitted by the petitioner.

3.The Tribunal by its order dated 17.12.1999 disposed of the petition issuing certain directions. The operative portion of the order is as follows:

> “We are of the opinion that the petitioner cannot seek copies of inter-Department correspondence, but he is only entitled to those copies on which reliance is placed by the assessing authority for making an order of assessment. But, even this should only succeed on production of regular accounts by the assessee. Therefore, we propose to give the following directions in this Original Petition, after hearing the Government Advocate and accordingly, direct that-
>
> 1.The assessee is directed to produce regular accounts for the year 1995-1996 on or before 31.12.1999. If the assessee defaults to comply with this direction, it will be open to the respondent to proceed with the assessment.
>
> 2.If the assessee produces the account books for 1995-96, the assessing authority can peruse the same and then permit the assessee to peruse records relating to the assessment for the year 1995-96. If copies are available in respect o any document on which the asssessing authority proposes to rely in making an order of assessment, the assessing authority is directed to furnish copies of only such documents to the assessee
>
> 3.After complying with the above formalities, the respondent Officer is permitted to make an order of assessment in accordance with law, as early as possible.
>
> The Original Petition is ordered in the

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above manner.”

4.In term of the above direction, the petitioner was required to produce the books of accounts for the relevant year and if he complies with the condition there was a direction to the respondent to furnish the copies of the available documents on which the Assessing Authority proposed to rely in making an order of assessment. The Tribunal made it clear that the petitioner is not entitled for copies of the inter-Department correspondence. It is admitted by the respondent in the counter affidavit in paragraph No.5, that the petitioner appeared before the Assessing Officer and produced the accounts at the time of original check. However, the copies of the records which were directed to be given to the petitioner by the Tribunal were not furnished to them. The reason which is given in the counter affidavit is by referring certain verification reports inflecting and it is not clear as to what is the verification report. If they are confidential information, then the respondent should have clearly stated about the same in the counter affidavit as long as the petitioner complied with the direction issued by the Tribunal, he is entitled to copies of the documents based on which the order of assessment is proposed to be made. However, the respondent has not complied with the direction issued by the Tribunal though it is admitted that the petitioner had produced the books account as per the direction of the Tribunal. This is sufficient to hold that the impugned order is contrary to the direction issued by the Tribunal and consequently in violation of the principles of natural justice.

5.Accordingly, this writ petition is allowed, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to once again appear before the respondent and produce the books account after which the respondent shall furnish the copies of the documents as directed by the Tribunal and also permit perusal of such of those documents for which the copies cannot be provided and grant 15 days time to the petitioner after furnishing the copies of the documents and after perusal of the documents on the files of the respondent, to submit their objections. On receipt of the objections, the respondent is directed to afford an opportunity of personal hearing to the petitioner and re-do the assessment in accordance with law. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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abr

To

The Deputy Commercial Tax Officer,
Perundurai Assessment Circle,
Perundurai, Erode District.

+1cc to Mr.C.Venkatraman, Advocate SR.No.46622
+1cc to Special Government Pleader, SR.No.46802

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