BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD).No.22972 of 2015
and
MP(MD)Nos.1 and 2 of 2015

M/s.Thiruvai Traders,
Represented by its Proprietor,
S.Tamilmani ..Petitioner

Vs.

The Assistant Commissioner (CT),
Karur East Assessment Circle,
CT Buildings, Karur. .. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, Prayer to issue a Writ of Certiorari or any other appropriate writ, order or direction in the nature of a writ, to call for the records of the respondent in TIN No.33633766934/2014-2015 dated 26.10.2015 and the consequential rectified order dated 18.11.2015 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundara rajan
For Respondents : Mr.R.Karthigeyan,
Additional Government Pleader.

O R D E R

This Writ Petition is directed against the impugned order dated 26.10.2015 passed by the Assistant Commissioner (CT), Karur East Assessment Circle, CT Buildings, Karur.

2.The learned counsel for the petitioner submitted that the petitioner being a wholesale dealer in oil and registered under the Tamil Nadu Value Added Tax Act, 2006 and also Central Sales Tax Act and assessee on the file of the respondent herein, during the assessment year 2014-2015, the petitioner also reported a total taxable turnover of Rs.14,75,37,524/-under the TNVAT Act. However during the assessment year, there were surprise inspections made on various dates on 13.03.2015, 14.03.2015, 15.03.2015, 16.03.2015, 17.03.2015, 30.03.2015, 31.03.2015 by the Commercial Tax Officer in the petitioner's business premises at Karur. When certain defects and omissions were found, proposals were also sent to the petitioner and on receipt of the said proposal, petitioner also filed an objection. The proposal was sent to treat certain omissions and thereby to impose penalty under Section 27(3) of the Act at 150 % of the tax involved on the estimated omissions in his notice dated 31.08.2015. Thereafter, the petitioner filed objections on 17.10.2015 enclosing F-Form for the month of November 2014, seeking a further time of 30 days to produce the F-Forms in respect of stock transfers effected to the Branch Office at Karaikal on the ground that the error in the Online Website Request was not rectified till date. However, in respect of purchase effected from Arun Oil Trade, Chennai ,based on the mismatch, the petitioner clearly explained that there was no any purchase effected by them from Arun Oil Trade, Chennai, that the TIN No. 33633766934/2014-2015 said to have been purchased inspite of two Tin Nos. 33633766934/2014-2015 from Arun Oil Trade, Chennai were said to have been effected by the petitioner. Specific denial was made stating that no such purchase was effected from Arun Oil Trade, Chennai. Even in respect of RBD Palmolein edible oil bearing TIN No. 33721281211, it was clearly indicated that the said purchase was effected only in the name of Balaji Oil Industries Private Limited. But they denied the import in respect of TIN No.33721281211. But the respondent without giving personal hearing, and even furnishing the documents, as contemplated under Section 22(4) of the Act, wrongly passed impugned order. Therefore, the same is liable to be quashed, he pleaded.

3. The counter-affidavit has been filed. The learned Additional Government Pleader appearing for the respondent would submit that the petitioner may be right in placing reliance on Section 22(4) of the Act. However, in the present case, he was not given reasonable opportunity of being heard. Section 22 (6) of the Act, clearly shows that if any dealership issued under subsection 4 of the Act, within 30 days from the assessment order may apply to the assessing authority along with correct return which has not been done by the petitioner.

4.However the learned counsel appearing for the petitioner submitted that the respondent was not right in proceeding with Section 22(A) of the Act. There is no any incorrect and incomplete return filed by the petitioner. In any event, it is an admitted case of violation of Section 22 (4) of the Act, since, the petitioner was denied opportunity of personal hearing. Therefore, by this Court, the impugned order is to liable be set aside as the same order has been passed under Section 22 (4) without giving opportunity of personal hearing to the petitioner. Secondly, the documents placed before this Court, show that allegations made against the petitioner that there were purchases effected from Arun Oil Trade, Chennai in respect of TIN No. 33721281211 has been found not correct. Similarly, the import said to have been made by the petitioner in respect of TIN No. 33721281211 also has been properly explained by the petitioner. A copy of the bill of entry dated 16.05.2014 in favour of Balaji Oil Industries Private Limited and the letter dated 20.11.2015 issued by the Arun Oil Trade also needs consideration by the assessing Officer in the assessment year.

5.For all the above reasons, this Court is inclined to set aside the same, accordingly it is done so, with the direction to the respondent to permit the petitioner to file all the relevant documents which are placed before this Court, within a week to the respondent and on receipt of the same the respondent within two weeks pass appropriate orders.

6.With the above direction this writ petition is disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Karur East Assessment Circle,
CT Buildings, Karur.

+1cc to M/S.K.Soundara rajan, Advocate SR.No. 74735

ORDER MADE IN
W.P.(MD).No.22972 of 2015
24.08.2017

myr/dsk
JM/JC/SAR 2/30.10.2017/3P/3C