BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.10.2017

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.19435 and 19436 of 2017
and
W.M.P.(MD) Nos.15733 and 15734 of 2017

Tvl.S.A.V.General Trading,
rep. By its Proprietor
A.Kalaiyarasi ... Petitioner in both petitions

Vs.

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

2. The Assistant Commissioner (CT) - III
   Tuticorin - I Assessment Circle,
   Commercial Taxes Buildings,
   No.282 - A, Beach Road,
   Thoothukudi - 628 001. ... Respondents in both petitions

Common Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN/Year:33055924921/2013-14 and 2012-13 dated 31.08.2017 respectively and quash the same.

In both the petitions
For Petitioner : Mr.R.Veeramanikandan

For Respondents : Mr.R.Karthikeyan, AGP for R1 and R2

<u>O R D E R</u>

Both the writ petitions have been filed by the same petitioner.

2.The challenge is in respect of the assessment for the years 2012 - 13 and 2013 - 14 determining the total and taxable turn over. The petitioner is a dealer in Cashew nuts and Timbers. The petitioner had reported total and taxable turn over for the said assessment years by filing monthly returns. A surprise inspection was conducted in the business place on 14.09.2015. The second respondent thereafter proposed to assess for the said years and also levy penalty under Section 27(3) of TN VAT Act, 2006. Notice was issued on 15.02.2017 to the dealer inviting objections. The petitioner after receiving notice filed her objections and requested the second respondent to provide copies of purchase invoices and also sales invoices based on which the proceedings were initiated. It was also stated that after getting the said copies, the petitioner would file the explanation. The second respondent thereafter has passed orders dated 31.08.2017 for the said assessment years, which have been impugned in the present writ petitions.

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

4.I do not propose to go into the merits of the matter. The writ petitions have to be allowed on the ground of violation of the principles of natural justice. Even though the petitioner made a specific request for furnishing all documents, which are the basis of proceedings, the impugned order has been passed without providing copies of the same. If the second respondent relied upon a certain document, copies thereof ought to have been furnished to the assessee, more so, when a specific request was made.

5.In the present case, the assessee had specifically stated that she would be able to submit his explanation only after receipt of such documents. If the second respondent wanted to take a stand that she has already been furnished, the second respondent ought to have specifically made his stand clear by an independent communication and thereafter proceeded to pass the impugned order only after giving opportunity to the petitioner to submit her explanation. In this case, that was not done. Therefore, on this sole ground, the orders impugned in these writ petitions stand quashed.

6.The matters are remitted to the file of the second respondent to pass fresh orders in accordance with law. The second respondent is directed to make available the copies sought for by the petitioner in her request letter dated 05.04.2017. At the same time, the petitioner has to be put on terms. There is a demand of tax and penalty in both the assessment orders. The petitioner is directed to pay 10% of the tax demanded in each of the impugned order.

7.The learned counsel for the petitioner agreed to remit 10% of the tax demand without prejudice to his contentions. The petitioner is given four weeks time from the date of receipt of a copy of this order to remit the said amount. Thereafter, the second respondent shall furnish the copies sought for by the petitioner and hold enquiry and pass fresh orders in accordance with law. If the petitioner fails to abide by the condition set out herein, the writ petitions stand automatically dismissed. Incorporation of this default clause is based on the consent given by the learned counsel for the petitioner. The writ petitions stand allowed on the terms set out above. No costs. Consequently, connected miscellaneous petitions are 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 Assistant Commissioner (CT) - III
   Tuticorin - I Assessment Circle,
   Commercial Taxes Buildings,
   No.282 - A, Beach Road,
   Thoothukudi - 628 001.

+1cc to Mr.Rooban, Advocate Sr.No.83181
+1cc to The Spl.Government Pleader Sr.No.83033

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VB/JC/SAR1/10/11/2017/3P/5C

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