BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.03.2017

CORAM :

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Petition (MD) No.3823 of 2017
in
W.M.P. (MD) No.3024 of 2017

Sri Vishnu Papers,
Represented by its Proprietor,
Smt.R.Andal,
Door No.4/398,
Kattananseval,
Sivakasi Taluk,
Virudhunagar District ... Petitioner

Vs.

Commercial Taxer Officer (Main),
Office of the Commercial Tax Officer,
Sattur, Virudhunagar District. ... Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN:33905783173/14-15, dated 08.08.2016 and quash the same and consequently direct the respondent to re-assess the assessment after giving personal hearing to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.M.Mohammed Sherbudeen
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader.

ORDER

This Writ Petition is filed to quash the proceedings of the respondent dated 08.08.2016 and for a consequential direction to the respondent to re-assess the assessment after giving personal hearing to the petitioner within the time stipulated by this Court.

2.The brief facts that are necessary for the purpose of disposing of this Writ Petition are as follows:-

2.1.The petitioner is a dealer dealing with waste paper business. She is also an assessee on the file of the respondent. For the assessment year 2014-15, the petitioner had dealings with one Balaji Traders, Nagercoil. The return submitted by the petitioner was accepted and the assessment was made based on the returns. However, the respondent, subsequently, based on the cross verification using internet web domain issued a Pre-Revision Notice on 15.07.2016 under Section 27(1)(a) of TNVAT Act, 2006, along with penalty under Section 27 of TNVAT Act, 2006. The petitioner submits that she has paid a sum of Rs.3,50,000/- for the assessment year 2014-15. As per the Pre-Revision Notice, dated 15.07.2016, the respondent stated that the respondent has noticed some purchase omissions and that therefore, the petitioner is guilty of suppression of sales turnover.

2.2.It was based on the cross verification, a sum of Rs.62,652/- was levied as tax due on escaped turnover from tax. The Pre-revision Notice also indicates the proposed assessment of penalty to the tune of Rs.31,326/-. The purchase details of other dealers were Annexed to the Pre-revision Notice. It is the contention of the petitioner that though, the petitioner requested the respondent to furnish the documents relied upon by the respondent to arrive at the turnover escaped from assessment, they were not furnished to the petitioner. After the order of assessment was made, the petitioner was able to secure the copies of invoices relating to purchase details that were found in the Pre-revision Notice. According to the petitioner, the invoices are not pertaining to the petitioner and that therefore, the assessment was based on wrong assumption of facts. The request of the petitioner is only to give an opportunity to the petitioner to establish her case. The petitioner's counsel submit that the petitioner is entitled to such an opportunity especially in a case of this nature where the petitioner was not furnished with copies of those documents which form the basis for the revision of tax and levy of penalty by the impugned proceedings.

3.I have considered the submissions of learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

4.The Pre-revision Notice issued by the respondent clearly indicates that the reason for pre-revision is only on the basis of the information available to them using internet web domain where the omissions of purchases were noticed by the respondent. The details found in the annexure to the notice can be ascertained only if the assessee is furnished with the copies of invoices or other materials relating to the transaction. In the absence of required documents, it is not possible for the petitioner to put forth her case effectively before the assessing authority. In such circumstances, though the petitioner could not produce any materials before the revised assessment, the materials now secured by the petitioner namely invoices pertaining to the transaction detailed in the annexure to the Pre-revision Notice cannot be ignored. The petitioner should be given an opportunity to show that the impugned assessment was purely based on mistake of fact or on erroneous assumption of facts. Hence, the impugned order of assessment is set aside and the mater is remitted to the respondent for passing fresh order on merits and in accordance with law, after considering the documents now produced before this court. The respondent is directed to give an opportunity to the petitioner to produce all the documents and an opportunity of personnel hearing. After considering the representation of the petitioner and the documents, it is open to the respondent to pass an order on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. Having regard to the peculiar facts of this case, the petitioner is directed to pay 25% of tax within a period of four weeks from the date of receipt of a copy of this order. The learned counsel for the petitioner has no objection for making 25% of the tax demanded.

5.With the above direction, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

The Commercial Taxer Officer (Main),
Office of the Commercial Tax Officer,
Sattur, Virudhunagar District.

+ 1 CC TO Mr.M.MOHAMED SHERBUDEEN, ADVOCATE IN SR No. 14447
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 14697

CMR/SRM
TE/MR : 24/03/2017 : 3P/4C

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