IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2018

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.37405 of 2007 and
M.P.Nos.1 and 2 of 2007

M/s.Jailakshmi Auto Works and
Agencies Pvt. Ltd.,
rep.by its Managing Director
A.Subramaniam,
Attur Salem Bye Pass Road,
Pinangukaradu Thottam,
Salem. .. Petitioner

Vs

The Commercial Tax Officer,
Salem Rural Circle,
Salem. .. Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records on the file of the respondent in his notice issued in TIN: 33682901123/2006-2007 & 2007-2008 dated 24.10.2007 and to quash the same.

For Petitioner : Ms.R.Hemalatha

For Respondent : Mr.Mohammed Shaffiq
Special Government Pleader

ORDER

Challenging the demand notice dated 24.10.2007 issued by the respondent for the assessment years 2006-2007 & 2007-2008, the petitioner has come up with this writ petition.

2.The brief case of the petitioner is that they are the dealer in Automobiles and Spare parts and they filed Form I returns for the period from January 2007 to August 2007. On receipt of the same, the respondent has issued the above said demand notice stating that the gross profit shown by the dealer was very low, which is not acceptable and they were requested to pay the difference of VAT payable. Aggrieved over the same, the petitioner is before this Court.

3.Upon notice, the respondent filed counter affidavit wherein in para 7 it has been stated as follows:

> "7. ... it is submitted that the petitioner is an assessee in the books of the Commercial Tax Officer, Salem Rural doing business in Automobiles and spare parts. On verification of the monthly returns it is found that the petitioners have reported and claimed huge input tax credit on purchases and sales output tax due during the month of April 2007, May 2007 and July 2007 to September 2007. The petitioner has paid out put tax only during the month of June 2007 when there is huge interstate purchases which are liable to tax on its 1st sale under the VAT Act 2006. A verification of the Form I return filed by the petitioner is crystal clear that he has claimed more input tax than output tax and also claiming huge ITC excess by carrying forwarding every month is against the principles of the VAT Act. Further, on verification of previous year records, the petitioners have shown a gross profit of 4.4% during 2005-06. Whereas during 2007-08 the petitioners have only shown a G.P. Of 0.05%. The petitioners have not filed any objection for notice stating any proper reason for the low G.P. reported during 2007-08. The notice was issued to the dealers by adopting scientific method to augment the Government Revenue since excess ITC was brought forward every month. The reasons that arise for giving a notice has been fully dealt with in Para 3 & 4. Hence the notice issued is found to be proper and justified. The petitioner is having an opportunity of filing his objections. Without filing objections he had approached this Court by filing W.P....."

4.Learned counsel appearing for the petitioner would submit that the respondent neither issued any notice calling for objections from the petitioner nor passed any assessment order, but straightaway issued demand notice demanding the difference of VAT payable by the petitioner and the same is arbitrary, illegal and against the principles of natural justice.

5.Reiterating the averments made in the counter affidavit filed by the respondent, the learned Special Government Pleader made his submissions. He fairly submitted that the petitioner had not submitted their objections to the show cause notice and no personal hearing was afforded to the petitioner.

6.Heard both sides and perused the records.

7.Admittedly, what is challenged in this writ petition is a demand notice. It is the specific case of the petitioner that no show cause notice was issued calling for objections from the petitioner and they neither submitted their objections nor attended any personal hearing to put forth their case which has been fairly admitted by the learned Special Government Pleader appearing for the respondent. Hence, this Court is of the view that the impugned demand notice is passed against the principles of natural justice. Accordingly, the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit their objections by treating the impugned demand notice dated 24.10.2007 as show cause notice, to the respondent, within a period of two weeks from the date of receipt of a copy of this order. On such submission, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of two weeks thereafter.

8.Accordingly, this writ petition stands disposed of. Consequently, connected M.Ps are closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vga

To

The Commercial Tax Officer,
Salem Rural Circle,
Salem.

+1cc to Ms.R.Hemalatha, Advocate, S.R.No.76643
+1cc to the Government Pleader, S.R.No.76531

W.P.No.37405 of 2007 and
M.P.Nos.1 and 2 of 2007

SSD(Co)
CS/07/12/2018