IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2018

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.7135 of 2010
and
M.P.No.1 of 2010

M/s.L.K.Textiles (P) Limited
represented by its Managing Director
L.Muthu Kumar ...Petitioner

Vs.

The Commercial Tax Officer,
Sathy Assessment Circle
Sathyamangalam. ...Respondent

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.3357 2981 073/2009-10 dated 23.10.2009 and 3.3.2010 and quash the same as being contrary to the provision of law and passed without following principles of natural justice.

For Petitioner : Mr.R.Senniappan
For Respondent : Mr.M.Hariharan, AGP

ORDER

Challenging the certificate dated 23.10.2009 as well as the consequential notice dated 03.03.2010 issued by the respondent, the petitioner has filed this writ petition.

2.The case of the petitioner is that they are the registered dealer and the assessee under the TNVAT Act and the CST Act. On 12.10.2009, the Commercial Tax Officer, Enforcement, Gobichettipalayam, conducted a field audit in the petitioner Mill and found certain defects and ultimately concluded that the petitioner would be liable to pay a sum of Rs.3,80,972/- towards tax and Rs.92,199/- towards interest under the TNVAT Act. Pursuant to the same, the respondent issued a certificate dated 23.10.2009, calling upon the petitioner to pay Rs.4,73,171/- within three days. On receipt of the same, the petitioner sent its reply on 29.10.2009. However, without considering the same and without issuing any show cause notice and providing any opportunity of personal hearing to the petitioner, the respondent issued the impugned notice dated 03.03.2010. Aggrieved over the same, the petitioner is before this Court.

3.The learned counsel for the petitioner submitted that the petitioner, on receipt of the certificate indicating the alleged arrears and payment of tax and interest, sent its reply along with the balance sheet relating to the assessment years 2007-08 and 2008-09. However, the respondent has not considered the same in proper perspective, but straight away issued the notice, calling upon them to pay the demanded tax along with interest, that too, without issuing proper show cause notice and providing any opportunity of personal hearing to the petitioner. Such action of the respondent is arbitrary, illegal and against the principles of natural justice.

4.The learned Additional Government Pleader appearing for the respondent fairly conceded the submission so made by the learned counsel for the petitioner. He further submitted that if the petitioner submits its objection afresh, enclosing all the necessary documents, the same would be considered by the respondent on merits and as per law, after affording due opportunity of personal hearing to them.

5.Heard both sides and perused the records.

6.It is the specific case of the petitioner that before issuing the demand notice, which is impugned herein, the respondent has not issued any show cause notice or provided any opportunity of personal hearing to the petitioner to put forth their case with supporting materials and hence, the same is arbitrary, illegal and in violation of the principles of natural justice. The same has not been refuted by the learned Additional Government Pleader appearing for the respondent.

7.This Court is of the view that the principles of natural justice cannot be ignored in any strait-jacket formula and the issuance of notice is an administrative device for intimating the assessee about the proposal to levy tax and penalty, in order to enable him to explain as to why it should not be done and the denial of the same is violative of the principles of natural justice.

8.When it is an admitted case that the petitioner has not been issued proper show cause notice and provided any opportunity of being heard, the certificate as well as the notice issued by the respondent against the principles of natural justice, cannot be allowed to sustain and the same are liable to be set aside.

9.Accordingly, the impugned certificate dated 23.10.2009 and the notice dated 03.03.2010 issued by the respondent are set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit its objections along with necessary documents 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 shall consider the same and pass a fresh order, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of four weeks thereafter.

10.This writ petition stands disposed of in the above terms. No costs. Consequently, connected Miscellaneous petition is closed.

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Sd/
Asst. Registrar(CS-VIII)

Sub Asst. Registrar

To

The Commercial Tax Officer,
Sathy Assessment Circle
Sathyamangalam.

+ 1 cc to Mr.R.Senniappan, Advocate Sr 46242

+ 1 cc to The Spl.Govt. Pleader (Taxes), Sr 45845

KR/16/10/18

W.P.No.7135 of 2010