IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :17.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.9912 and 9913 of 2006
&
W.P.M.P.Nos.11152 and 11153 of 2006

M.Fazlur Rahman
Dealer in Beedi Leaves
171/1, Chunnambukkara Street
Vellore .. Petitioner in both WPs

Vs.

1.The Appellate Assistant Commissioner (CT)
C.T.Buildings
Fort Round
Vellore

2.The Commercial Tax Officer
Vellore South Assessment Circle
C.T.Buildings
Fort Round
Vellore .. Respondent in both Wps

Common Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari calling for the records of the first respondent in A.P.No.219 of 2002 and A.P.No.220 of 2012 dated 05.02.2003 and quash the same as illegal and against the principles of natural justice and also against the judgment of the Hon'ble Supreme Court reported in 39 STC Page 478 in the case of State of Kerala Vs. K.T.Shaduli Yusuff and the judgment of this Court reported in 142 STC Page 130 in the case of T.M.Rajaganapathi Traders Vs. CTO, Salem.

For Petitioner: Mr.K.Soundararajan

For Respondent: Mr.M.Hariharan
Additional Government Pleader

COMMON ORDER

Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing for the respondent.

2.These writ petitions have been filed challenging the orders passed by the Appellate Assistant Commissioner, the first respondent herein in A.P.Nos.219 and 220 of 2002 dated 05.02.2003. The appeals filed by the petitioner challenging the Assessment Orders passed by the second respondent under the provisions of the Tamil Nadu General Sales Tax Act were dismissed by the impugned order. The short ground on which the petitioner is before this Court is by contending that there is violation of principles of natural justice.

3. The revision of assessment took place on account of an inspection conducted in the petitioner's place of business during which certain slips and records were recovered from the petitioner. Statements were also recorded from the petitioner. The Assessing Officer found that almost all the records which were seized from the petitioner's premises were in Urudu language. Therefore, the Assessing Officer obtained a translated version of the said documents and based on the same, he has completed the assessment.

4. The petitioner in the appeals filed before the first respondent raised a specific plea that without providing an opportunity to cross-examine the person, who had translated the urudu document, the Assessing Officer could not have straight away accepted the stand in the translated version and rejected the stand in the objection raised by the petitioner. This aspect has not been dealt with by the Appellate Authority.

5. Thus, considering the factual position, this Court is of the view that the matter requires to be reconsidered. Though the writ petition is pending from 2006, till date no counter affidavit is filed. That apart, at the time when the writ petition was entertained, an order of interim stay was granted on 18.04.2006 subject to the condition that the petitioner pays the entire amount of tax and furnish immovable property security for the entire penalty amount. The petitioner does not have instruction as to whether the said condition has been complied with or not. In any event, the matter requires to be reconsidered by the Assessing Officer.

For the above reasons, the writ petitions are allowed and the impugned orders passed by the first respondent is set aside and the matter is remanded to the second respondent for fresh consideration. The petitioner is directed to treat the Assessment orders dated 30.11.1998 as show-cause notices and submit their objections to the respondent within a period of 30 days from the date of receipt of a copy of this order. After the objection is received, the second respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

gpa

To

1.The Appellate Assistant Commissioner (CT),
C.T.Buildings,
Fort Round,
Vellore.

2.The Commercial Tax Officer,
Vellore South Assessment Circle,
C.T.Buildings,
Fort Round,
Vellore.

+1cc to Mr.K.Soundararajan, Advocate Sr.47728
+1cc to the Special Government Pleader Sr.67703

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srg 9/8/2018