IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2018
CORAM

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.27246 of 2013
&
M.P.No.1 of 2013

Tvl.Jain Marbles and Tiles
Represented by its Proprietor
Sri Sushiil Kumar Jain
No.104/52-O Salem Main Road
Rajambal Nagar
Kallakurishi - 606 202
Villupuram District ... Petitioner

Vs.

The Commercial Tax Officer (Main)
Kallakurichi Assessment Circle
Kallakurichi - 606 202
Villupuram District ... Respondents

Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records on the files of the respondent in TIN 33714781995/2012-13 dated 26.08.2013 and quash the same as being contrary to the principles of natural justice and further direct the respondent to pass order afresh in accordance with law.

For Petitioner : Mr.R.Senniappan
For Respondents : Mr.M.Hariharan
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel for the petitioner and Mr.M.Hariharan, learned Additional Government Pleader appearing on behalf of the respondent.

2. The petitioner has filed this petition challenging the Assessment Order dated 26.08.2013 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 for the Assessment year 2012-23 as it is contrary to principles of natural justice. Thus, the petitioner's case is that they specifically asked for an opportunity of personal hearing to explain to the respondent that there is no stock difference as alleged by the inspecting officials.

3. Learned counsel for the petitioner submitted that inspecting officials merely proceeded on the basis of purchase value and sale value and did not take any steps to verify the actual stock. Having left with no other alternative, the petitioner was compelled to pay the tax during the course of inspection and avoid embarrassment and other problems. The petitioner sent reply on 10.08.2013 to the revision notice. The respondent could have afforded an opportunity to the petitioner to place before him the records to establish that there is not actual stock difference.

4. From the assessment file, I find that a notice was issued to the dealer dated 26.07.2013 fixing the date of personal hearing as 12.08.2013. This was despatched to the petitioner by Registered Post on 26.07.2013, after which the petitioner has submitted their reply dated 10.08.2013, which was received by the Assessing Officer on 19.08.2013. However, before passing the Assessment Order, the respondent could have afforded an opportunity of personal hearing and verified the stand taken by the petitioner, whether it is correct or not. However, this has not been done by the respondent.

5. Thus, considering these facts, this Court is of the view that one more opportunity shall be granted to the petitioner to go before the Assessing Officer and produce all the records and the same can be verified by the respondent to ascertain as to whether there was actually a stock difference. This direction is given because the petitioner has already paid the disputed tax on account of stay granted in this writ petition. Penalty alone has remain stayed.

6. In the light of the above, this writ petition is disposed of by directing the petitioner to treat the impugned order as show-cause notice and submit their objections within a period of 15 days from the date of receipt of a copy of this order along with necessary records. On receipt of the objections, the respondent is directed to fix a date of personal hearing, on which day the respondent shall verify the records produced by the petitioner if merits acceptance and pass a reasoned order on merits and in accordance with law. Till the above direction is complied with, the penalty, as quantified in the impugned Assessment order, shall not be recovered. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//
Sub Assistant Registrar

gpa

To

The Commercial Tax Officer (Main)
Kallakurichi Assessment Circle
Kallakurichi – 606 202
Villupuram District

+1cc to Mr.R.Senniappan, Advocate, S.R.No.37393
+1cc to the Special Government Pleader(T), S.R.No.37662

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ssv(co)
cs/26/06/18