BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.11.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.129 of 2015 and
M.P.(MD)No.1 of 2015

S.Sheik Oli,
S/o.N.Sirajudeen,
Proprietor,
M/s.Affan Traders,
No.28, K.B.Nagar, Batlagundu Road,
Begampur, Dindigul - 624 002. ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner(CT)-III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001. ... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the second respondent in TIN:33535241971-2014-15 dated 24.12.2014 and quash the same and to consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.M.Rajarajan,
Government Advocate.

ORDER

The petitioner is an assessee registered with the second respondent. The subject matter pertains to the assessment year 2014-2015. The second respondent issued notice dated 22.09.2014 alleging that the petitioner herein had made certain bogus purchases from Ayisha Leathers, Dindigul. The petitioner herein offered his reply vide explanation dated 30.09.2014 along with supporting materials.

Thereafter, the impugned order came to be passed. Questioning the same, this Writ petition has been filed.

2. Heard the learned counsel appearing for the petitioner and the learned Government counsel appearing for the respondents.

3. Mr.C.Sundara Moorthy, Assistant Commissioner-III, Commercial Taxes, Dindigul/the second respondent herein is present in person and assisted this Court.

4. It is not in dispute that the matters that have not been referred to in the show cause notice, find place in the impugned order. On this sole ground, the impugned order has to be set aside and accordingly, it is set aside.

5. But then, before remanding the matter to the file of the second respondent, this Court must make certain observations. The case of the petitioner is that he made purchases from one Ayisha Leathers. The said Ayisha Leathers is also an assessee registered with the second respondent. If the said Ayisha Leathers is at fault, as per the decision rendered in W.P.No.9265 of 2013, dated 06.11.2014 in the case of Infiniti Wholesale Limited, Chennai Vs. The Assistant Commissioner(CT), Koyambedu Assessment Circle, Chennai, the authority will have to proceed only against the selling dealer. The second respondent while passing orders afresh in accordance with law, will have to bear in mind the mandate laid down by the High Court vide order dated 06.11.2014 in W.P.(MD)No.9265 of 2013.

6. The second respondent levied purchase tax on the petitioner. A mere purchase by the petitioner from unregistered sellers will not attract the purchase tax, unless the other conditions are also fulfilled. The second respondent will give a specific finding as to whether those conditions are fulfilled before levying purchase tax.

7. With these observations, the matter is remitted to the file of the second respondent. The second respondent is at liberty to issue fresh notice to the petitioner. After affording an opportunity of personal hearing to the petitioner, the second respondent shall pass orders afresh in accordance with law.

8. The Writ petition stands allowed, accordingly. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of
   Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner(CT)-III,
   Commercial Tax Building,
   Sub-Collector's Office Road,
   Dindigul - 624 001.

+1 cc to Spl.Govt.Pleader, SR.NO.96781
+1 cc to Mr.B.Rooban,Advocate, SR.NO.96498

pmu
SS/RSK/SAR 4/19.12.2018/3P/5C

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M.P.(MD)No.1 of 2015
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