BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.19283 of 2015
and
M.P.(MD).No.1 of 2015

Tvl.Nowfal Traders,
rep. by its Proprietrix A.Fathima
Having Office at No.30/44, Alagumaguthanan Street,
Kadayanallur,
Tirunelveli District. ... Petitioner

vs.

The Commercial Tax Officer,
Commercial Tax Department,
Shencottai (C)
Tirunelveli District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent in TIN/33275701894/13-14, dated 10.06.2015 and quash the same.

For Petitioner : Mr.T.Bashyam

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

The writ petition has been filed for issuance of Writ of Certiorari to call for the records pertaining to the impugned order passed by the respondent in TIN/33275701894/13-14, dated 10.06.2015 and quash the same.

2.The petitioner is a registered dealer under TNVAT Act, doing business in Food Products. She submitted a return for the year 2013-14. On scrutiny, it was found that there was wrong claim input tax credit. Accordingly, a revision notice was issued by the respondent on 02.02.2015. Since the petitioner did not file any objection, the proposal was confirmed and the input tax credit given to the petitioner was reversed for the year 2013-14 by his order dated 10.06.2015. Aggrieved over the order of the Assessing

Officer, the petitioner is before this Court.

3.According to the petitioner, the information is taken out from website and considering the mismatch, the Assessing Authority reversed the input tax credit given to the petitioner. However, on perusal of impugned order itself, it is noted that the Assessing Authority, before passing the order, has not given any personal hearing. The revision notice given by the respondent also does not enclose the details taken from the website of the department. Without producing any document and without following the procedure laid down by this Court, in ***Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai*** reported in ***2017 (99) VST 343*** in conducting an enquiry, the impugned order came to be passed.

4.I have heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

5.It is well-settled that when the department gets certain details from the website, it is incumbent on them to provide the copies and call for objections. In cases of mismatch, the Assessing Authority shall independently apply his mind and frame proposal, after verifying the details by conducting intradepartmental enquiry. In doing so, it is mandatory to the Assessing Authority to provide personal hearing before passing the final order. Even though the department has given instructions and it is reiterated by this Court in various judgments, the respondent appeared to have passed the order, without adhering to the settled procedures. In such circumstances, the order passed by the Authority does not stand the scrutiny of law.

6.In view of the above, the impugned order passed by the respondent in TIN/33275701894/13-14, dated 10.06.2015 is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to conduct enquiry with regard to the mismatch and send the revised proposal to the petitioner, calling for objections. Whether objections are filed or not, after affording an opportunity of personal hearing, the respondent shall pass orders on merits and in accordance with law, within a period of 6 weeks thereafter. The writ petition is disposed of in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-3)

To

The Commercial Tax Officer,
Commercial Tax Department,
Shencottai (C)
Tirunelveli District.

+1 CC to Mr.T.BASHYAM, Advocate in SR.No.71543
+1 CC to the Special Government Pleader, SR.No.71703

VS
RJ/PN/SAR-3/25/07/2018 - 3P/4C

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