BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.19307 of 2015
and
M.P.(MD).No.1 of 2015

M/s.Hameed Agency,
rep. by its Proprietor A.Saya Begam
Having Office at No.206, Main Bazaar,
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/33235700849/13-14, dated 11.06.2015 and quash the same.

For Petitioner :Mr.T.Bashyam

For Respondent :Mr.S.Dhayalan
Government Advocate

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/33235700849/13-14, dated 11.06.2015 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 were certain wrong claims with regard to input tax credit. Accordingly, a revision notice was issued by the respondent on 27.01.2015. 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 an order dated 11.06.2015. Aggrieved over the said 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 without providing the materials relied on by him for arriving at the decision, so also without providing an opportunity of personal hearing.

4.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 for crystallizing the proposal after an intra departmental enquiry regarding mismatch and adherence of principles of natural justice, the respondent hastened to pass the order impugned in the present writ petition.

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 the cases of mismatch, the Assessing Authority, shall independently apply his mind after conducting an intra-departmental enquiry in framing the proposals. 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/33235700849/13-14, dated 11.06.2015 is set aside and the matter is remanded back to the respondent for fresh consideration. Accordingly, the writ petition is allowed. 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. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To:

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

+1CC to Mr.T.Bashyam Advocate in SR.No.71542.

+1CC to Special Government Pleader in SR.No.71678.

VS
DS/SV/SAR-2 :18.07.2018: 3P/4C

W.P.(MD) No.19307 of 2015
06.07.2018