BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.7912 & 7913 of 2017
and
W.M.P(MD)No.6134 & 6135 of 2017

W.P(MD)No.7912 of 2017

Tvl.Vimal Agency ...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 Commercial Tax Officer-II,
Dindigul II Assessment Circle,
Commercial Taxes Buildings,
Sub-Collector's Office Road,
Dindigul-624 001. ..Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33915222073/2014-15, dated 24.02.2017 and quash the same and to consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

W.P(MD)No.7913 of 2017

Tvl.Vimal Agency ...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 Commercial Tax Officer-II,
Dindigul II Assessment Circle,
Commercial Taxes Buildings,
Sub-Collector's Office Road,
Dindigul-624 001. ..Respondents

PRAYER: Writ Petition is filed, under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33915222073/2015-16, dated 24.02.2017 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
(in both cases)
For Respondents : Mr.K.Mu.Muthu,
(in both cases) Additional Government Pleader

ORDER

The petitioner in both the writ petition is one and the same. The assessment years alone are different.

2.The Prayer sought for in these writ petitions is for a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN:33915222073/2014-15, dated 24.02.2017 and TIN:33915222073/2015-16, dated 24.02.2017 and quash the same and consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

3. The petitioner is an assessee registered with the second respondent. The petitioner was issued with pre-revision notice, dated 09.12.2016. The petitioner offered his reply. Thereafter, the impugned order came to be passed on 24.02.2017. The same is assailed in these writ petitions.

4.Heard the learned counsel appearing on either side.

5.The second respondent charges the writ petitioner with having indulged in sales suppression and purchase suppression. This Court had a look at the annexure enclosed by the second respondent. The Tabular column contains the Date, Invoice, Amount, Rate of Tax and the Tax Amount. It does not contain any other particulars. It does not show to whom the writ petitioner made the sale. Therefore, in the absence of any particulars, the writ petitioner cannot offer effective defence. Therefore, on this sole ground, the orders impugned in the writ petitions are liable to be set aside. In fact, the writ petitioner has specifically taken this point as Ground No.5 in the writ petition.

6.The specific case of the writ petitioner is that the second respondent has not provided the details of the name, Tin, Invoice Number of the otherend dealer in respect of the allegation of mismatch. Therefore, the orders impugned in these writ petitions are set aside. Accordingly, these writ petitions are allowed and the matter is remitted back to the file of the second respondent to pass orders afresh in accordance with law. The writ petitioner had paid 25% of the disputed tax at the time of filing of the writ petitions. The same shall remain with the second respondent subject to the out come of the revision proceedings. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-I)

To

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

2.The Commercial Tax Officer-II,
Dindigul II Assessment Circle,
Commercial Taxes Buildings,
Sub-Collector's Office Road,
Dindigul-624 001.

+1cc to Mr.B.ROOBAN, Advocate Sr.No. 98958
+1cc to The Special Government Pleader, Sr.No. 98935

W.P(MD)Nos.7912 & 7913 of 2017
05.12.2018

TR/SKN/SAR-I (04.02.2019) 3P 5C