BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2019

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THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.11992 of 2015
and M.P.(MD)No.1 of 2015

M/s.Seenivasa Constructions,
Rep.by its Proprietor B.J.Radhakrishnan,
1081-C, Mission Church Street,
Manambuchavadi,
Thanjavur - 613 001. ... Petitioner

Vs.

The Commercial Tax Officer (CT),
Thanjavur -I, Assessment Circle,
Thanjavur. ... Respondent

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN.No.33793803124/2013-14 and quash the order dated 15.05.2015 and further direct the respondent to give an opportunity of hearing to the petitioner to prove the correctness or completeness of the return submitted, to produce books of accounts or any other records, and pass appropriate orders on merits and in accordance with law, in terms of the decisions of this Court reported in 9 VST 478 (Mad); W.P.(MD)No.4500 of 2008 dated 27.06.2008 and also in W.P.No.6655 of 2010 dated 11.02.2011.

For Petitioner : Mr.M.S.Suresh Kumar
For Respondent : Mr.A.Thiyagarajan,
Government Advocate.

ORDER

The petitioner assails an order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act (in short 'Act') dated 15.05.2015 for the period 2013-14.

2.The sequence of dates and events in this case reveals that a notice was initially issued to the petitioner on 17.12.2014. The purchase turnover on imported logs, as per the aforesaid notice, was an amount of Rs.57,63,169/-. In addition, tax was proposed on lorry freight and other charges as well as an addition on account of gross profit at 10%.

3.The petitioner filed a reply on 02.01.2015 setting out the details of imported logs from Tvl.Seenivasa Constructions.

4.A second notice dated 09.04.2015 was then issued wherein, the officer alleges that upon comparison of the import data available on the departmental website, there was a suppression of turnover amounting to Rs.6,86,276/-. The imported purchase turnover as per the web-site is stated to be Rs.67,64,308/-.

5.This was again followed by a third revised notice dated 27.04.2015 wherein the imported purchase turnover as per bill of entry is stated to be an amount of Rs.81,66,579/-. Penalty has been proposed in all three notices.

6.According to learned counsel for the petitioner, after receipt of the latter two notices, the petitioner had appeared in person before the assessing authority specifically requiring an opportunity to produce the books of accounts to support its returned turnover. However, this opportunity was not granted to it and the impugned order has been passed sans an opportunity of personal hearing.

7.Though an opportunity has been granted for filing of counter as a last chance, no counter is filed even today. Hence, I proceed with the matter on the basis of the oral submissions of learned Government Advocate and the records.

8.The contention in affidavit (paragraph No.5), page No.4 is to the effect that the petitioner had specifically expressed his willingness to produce the books of accounts and other related documents to prove the correctness of the returns submitted by him and the same was not granted by the officer. This averment/allegation stands uncontroverted.

9.I also note that three pre-assessment notices were issued by the officer and the amount stated to relate to imports, varies from notice to notice. There is thus no clarity so far as the pre-assessment proposals are concerned. Moreover, while the latter two notices have been issued on 09.04.2015 and 27.04.2015, the second one granting an opportunity to file written objections within 15 days from the date of receipt of the same, the impugned order has itself been passed on 15.05.2015, which constitutes a clear violation of the principles of natural justice. Clearly, the opportunity to object is insufficient.

10.In this view of the mater, I set aside the impugned order of assessment. The petitioner / assessee will appear before the assessing officer on 23.07.2019 at 10.30 a.m. No further notice need be issued in this regard seeing as learned counsel for the petitioner have been put to notice in open court. The assessing authority shall, after affording an opportunity of hearing to the petitioner and upon production of books of accounts as well as other details in support of its returned turnover, pass orders *de novo* within a period of four weeks from the date of conclusion of personal hearing.

11.With these directions, this Writ Petition is disposed of. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer (CT),
Thanjavur -I, Assessment Circle,
Thanjavur.

+1CC TO MR.M.S.SURESH KUMAR, Advocate Sr. No. 74279
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 74529

W.P.(MD)No.11992 of 2015
09.07.2019

KG(CO)
TR (24.07.2019) 3P 4C