BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.23535 of 2019
and
W.M.P.(MD).No.20163 of 2019

M/s.Lily Trading & Company
rep. By its Proprietrix Mrs.J.Lily Pushpam ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST)
Madurai (North)
Madurai.

2.The Commercial Tax Officer,
West Tower Street Circle,
Madurai. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of writ of Certiorarified mandamus, to call for the records of the 2nd respondent in his proceedings in TIN No. 33154802479/2011-12 dated 14.11.2016 quash the same as it is unlawful and in violation of the principles of natural justice and further direct the 2nd respondent to issue fresh notice for filing objections along with an opportunity of personal hearing and cross examination of the other end dealers in compliance of the appeal order in VAT 190/2014 dated 12.02.2015.

For Petitioner : Mr.R.D.Ganesan
For Respondents : Mr.M.Rajarajan
Government Advocate

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ORDER

Mr.M.Rajarajan, learned Government Advocate takes notice for the respondents.

2. By consent of both sides, the writ petition is taken up for final disposal.

3.(i)The writ petitioner is a registered dealer under the respondents, trading the pulses. For the assessment year 2011-12, the petitioner has claimed input tax credit on the purchases effected from registered dealers within the State. Thereafter, pursuant to a surprise inspection done by the Enforcement Wing officicials, a revision notice dated 30.06.2014 was issued by the 2nd respondent, based upon the report of inspection. Thereafter, the petitioner filed his detailed objections on 17.09.2014. But, without considering the same and without giving an opportunity of personal hearing, the second respondent passed the impugned order.

ii) Challenging the same, the petitioner has filed an appeal before the appellate authority in VAT Appeal No.190/2014, dated 12.02.2015 before the first respondent. The first respondent partly allowed the appeal, in which, the first issue was decided in favour of the petitioner and in respect of the second issue, the order of the Assessing Authority was set aside and the matter was remanded back with a direction to the second respondent to make cross-verification with his counter parts of the other end dealers, if necessary, to pass orders afresh on merits and in accordance with law. In respect of the third issue also, the order of the Assessing Officer was set aside and the matter was remanded back to the Assessing Officer to further verification and to pass orders afresh, based on the judicial decisions held in **(2012) 50 VST 179(Mad) in the case of Althaf Private Limited** and a direction was given to the petitioner to produce the relevant records and books of accounts to the Assessing Officer. In respect of the fourth issue, again the order was set aside and remanded back to the Assessing Authority.

iii) After remand order, the Assessing Authority, without conducting intra-departmental enquiry with his counter parts and without cross-verifying the facts and without conducting any examination of witnesses, has passed an order. Aggrieved over the same, the petitioner is before this Court for quashing the said assessment order on the ground that it violates the principles of natural justice and contrary to the directions issued by the Appellate Authority.

4.It is pertinent to note that the petitioner has also contributed by not filing objections and relevant records including Books of Accounts before the Assessing Authority. There is an appeal provision available to the petitioner.

5.Considering the facts and circumstances of the case, the petitioner is directed to file an appeal, if he chooses to do so, within a period of two weeks from the date of receipt of a copy of this order, on deposit of a sum of Rs.50,000/- (Rupees fifty thousand only). On such deposit, the appellate authority is directed to consider the appeal on merits without insisting on the limitation within a period of four weeks from the date of receipt of a copy of this order.

6.Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

vs

To

1.The Appellate Deputy Commissioner (ST)
Madurai (North)
Madurai.

2.The Commercial Tax Officer,
West Tower Street Circle,
Madurai.

+1 CC to Mr.R.D.GANESAN, Advocate (SR-96754[F] dated 07/11/2019)

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