**(2015) 10 MAD CK 0084**

**In the Madras High Court**

**Case No :** W.P. Nos. 22199 and 22200 of 2015 and M.P. No. 1 of 2015

Reward Constructions Pvt. Ltd. APPELLANT

Vs

The Commercial Tax Officer RESPONDENT

**Date of Decision :** 09-10-2015

**Acts Referred:**

**Citation :** (2015) 10 MAD CK 0084

**Hon'ble Judges :** R. Mahadevan, J.

**Bench :** Single Bench

**Advocate :** R. Kumar, for the Appellant; S. Manoharan Sundaram, AGP(T), for the Respondent

# Judgement

R. Mahadevan, J.—Heard the learned counsel for the petitioner and Mr. S. Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed challenging the orders of the respondent in TIN 33631666884/2011-12 and 2012-13 respectively dated 29.12.2014 and to direct the respondent to issue notices and serve the same as per the provisions of the Act.

3. According to the learned counsel for the petitioner, the petitioner is a works contractor and executing contracts in the State of Tamil Nadu and other States in India. Originally they are the registered dealers on the file of the Assistant Commissioner (CT), Sriperumbudur Assessment Circle. After re-organization of assessment circle, the registration file was transferred to the respondent herein. The petitioner is a registered dealer under the TNVAT Act and assigned with TIN 33631666884 and also registered dealer under the CST Act with registration No. CST 1049696. The petitioner is filing their monthly returns through e filing every month. The place of business of the petitioner was inspected by the officers of the Enforcement Wing and during such time, the petitioner produced the books

of accounts for the relevant period. The inspecting officials observed various issues and recorded a statement. After inspection, the authorized representative of the petitioner company contacted the Commercial Tax Officer, Sriperumbudur Circle and he was informed that notices will be issued and on receipt of the same, they were advised to file their objections. After re-organisation of the assessment circle, the file was transferred to the respondent. In the meantime, the contracts awarded by M/s. Cosma International and Caterpillar were over and the petitioner had filed NIL return through TNVAT website. The petitioner registered the work sites as additional place of business and the technical staff have worked in the work sites. While so, the respondent passed the impugned orders dated 29.12.2014 and sent the same to the address of the Director at Pune, without authentication. Aggrieved over the same, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that while the respondent served the impugned proceedings to the Director at Pune, no revision notice was sent to him. Further, according to him, the respondent served the impugned proceedings with notices of demand without authentication and hence such proceedings are not enforceable. That apart, according to him, even as per the finding of the respondent, the notices were served by affixture on 22.12.2014 and hence, passing impugned orders on 29.12.2014 before the expiry of notice time, vitiates the entire proceedings.

5. That apart, according to the learned counsel for the petitioner, though the petitioner by letter dated 28.04.2015, requested to serve notice before proceeding further, to the respondent, marking a copy of the same to the Commissioner of Commercial Taxes, no reply has been received. That apart, according to the learned counsel, when the authorized representative made a request to the respondent to issue a certified copy duly authenticated to take further course of action against the proceedings, the respondent has issued a certified copy of the order on 15.06.2015 duly signed by him. It is the apprehension of the petitioner that the respondent will take action to collect the demand raised in the impugned proceedings which were passed without proper service of notice.

Based on the above, the learned counsel for the petitioner has sought for allowing of the writ petitions.

6. The learned Additional Government Pleader (Taxes) relying on the counter affidavit filed by the respondent, denying the averments made by the petitioner.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. Admittedly, the pre-assessment notices were not served to the residential place of the business of the petitioner, which is mandatory as required under the provisions of the TNVAT rules. It is also admitted in the counter affidavit that notices were not sent to the residential address and only the assessment orders

came to be served to the residential address when the respondent is aware of the residential address, nothing prevented the respondent from serving a copy to the said address. Hence, on the ground of violation of principles of natural justice and also the TNVAT Rules, the impugned orders are liable to be quashed.

9. In view of the same, by quashing the impugned orders dated 29.12.2014, the matters are remitted back to the respondent for passing orders afresh. To give a quietus to the issue, the authorized representative of the petitioner Company is directed to appear before the respondent on any day between 12.10.2015 and 16.10.2015 and on such appearance, the respondent is directed to furnish notices to him and upon receipt of the same, within a period of two weeks, the petitioner is directed to file necessary objections with supportive documents and on such filing, the respondent is directed to consider the same and pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter, after providing due opportunity of hearing to the petitioner.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

 