IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 24.04.2015

CORAM:

THE HON'BLE MR. JUSTICE T. RAJA

W.P. No. 12241 of 2015
and
M.P.No.1 of 2015

Sri Balaji Enterprises
Represented by is Proprietor
R.Karthikeyan .. Petitioner

Vs.

The Deputy Commercial tax Officer (FAC),
Arakkonam Assessment Circle,Arakkonam. .. Respondent

PRAYER: This Writ Petition has been filed under Article 226 of the Constitution of India to issue an order of Writ of Certiorarified Mandamus, to call for records on the files of the respondent in TIN.33264303014/2012-13 dated 5.2.2015 and quash the same as being contrary to the principles of natural justice and that of the principle laid down by this Honourable Court in the judgment reported in (2007) 295 ITR 303 (Mad) (V.Selladurai Vs. Chief Commissioner of Income-Tax (OSD) and another) and further direct the respondent to pass orders afresh in accordance with law after grant of enquiry and opportunity and pass further orders.

For petitioner : Mr.R.Senniappan
For respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

O R D E R

This writ petition has been directed against the impugned order passed by the Deputy Commercial Tax Officer (FAC), Arakkonam Assessment Circle, wherein the petitioner has been finally assessed under the Tamil Nadu Value Added Act to a tax amount of Rs.79,697/- and thereupon the assessing officer has also directed him to pay a sum of Rs.79,697/-, with a further direction that the balance tax/ compounded amount shall be paid within 30 days from the day of service of this notice, indicating therein, failing which the amount will be recovered as if it were an arrear of land revenue or fine imposed by the learned Magistrate and the company also will be liable to pay the interest under section 42 of the Act.

2. Contending further, learned counsel appearing for the petitioner would submit that when the respondent has come to pass the order under section 22(4) of the Act, he has to provide an opportunity of hearing, which is mandatory in nature. As this minimum opportunity has been refused, the impugned order, admittedly, is liable to be interfered.

3. Mr.S.Kanmani Annamalai, learned Additional Government Pleader representing the respondent, also finds no reply to the arguments and to the point raised by the petitioner that there has been violation of principles of natural justice and is unable to support the impugned order.

4. In the present case, the respondent has passed the impugned order under section 22(4) of the TNVAT Act, without providing an opportunity of hearing to the petitioner. A Division Bench of this court, in a similar circumstances, in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another reported in (2007) 295 ITR 303 (Mad), has held that when the statute requires to grant an opportunity for personal hearing, it is for the authority who is sitting on the statutory provision requires to adhere to the said conditions, without having any reservation because it is a mandatory requirement. In the absence of such an opportunity, of being heard, as contemplated under section 22(4) of the TNVAT Act, the impugned order of assessment is liable to be set aside with a direction to re-do the assessment in accordance with law, after granting an opportunity of hearing.

5. In the light of the above ratio, as this court has also noticed that there is no notice of hearing given to the petitioner, in terms of section 22(4) of the Act, the impugned order is set aside and the matter is directed to be redone by the respondent/ the Assessment Authority, on merits and in accordance with law.

6. With the above direction, the Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. There is no order as to costs.

avr/ vrc



s/d-
Assistant Registrar(CS-III)

True Copy

Sub-Assistant Registrar

To

The Deputy Commercial tax Officer (FAC),
Arakkonam Assessment Circle,
Arakkonam.

+ 1 cc to Mr.R.Senniappan, Advocate sR 22426

+ 1 cc to Spl.Govt.Pleader SR 22876

sr(co)
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