IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 06.03.2015

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THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.6217 of 2015
and M.P.No.1 of 2015

1 V.Jayabalan
2 D.Murugan ...Petitioners

Vs

1. The Government of Tamilnadu
Rep. by its Secretary, Commercial Tax Department, Fort St. George, Chennai-600 009.

2. The Commissioner,
Rural Development and Panchayat Department,
Ezhilagam, Chepuak, Chennai-5.

3. The Commercial Officer,
Office of the Commercial Tax Officer
Cuddalore-607 001.

4. The Assistant Commissioner,
Office of the Assistant Commissioner,
Cuddalore-607 001. .... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitutiton of India seeking for the relief of issuance of a writ of certiorari to call for the records pertaining to the impugned order bearing No.RC.A5/00607/2012 dt 3.12.2014 on the file of the 3rd respondent and quash the same.

For Petitioner : Mr.U.Karunakaran

For Respondents: Mr.Cibi Vishnu, AGP (Taxes)
for RR.1, 3 and 4
Mr.M.E.Raniselvam,AGP for R.2

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondents 1, 3 and 4 and the Additional Government Pleader appearing for the 2nd respondent, who accepts notice on behalf of the respondents and with their consent, the main writ petition itself is taken up for hearing.

2. The Petitioner has come forward with this writ petition challenging the order of the 3rd respondent passed in R.C.A5/00607/2012 dated 3.12.2014.

3. According to the learned counsel for the petitioner, the 3rd respondent caused notice dated 30.9.2014 to the petitioner, his son J.Chandrakumar and his son in law D.Murugan on the pretext that the construction careered out by the petitioner is work contract and construing as dealer demand was made to pay tax on the value assessed by them and to pay 150% penal levy on the tax due and directed to file objections, if any. The petitioner has sent objection on 9.10.2014 that they are not dealer and they are not selling the property to any third party. Despite receipt of the said objections by the 3rd respondent on 10.10.2014, without considering the same, the 3rd respondent has passed the impugned order on 3.12.2014 and issued notice of assessment and demand for a sum of Rs.6,94,100/- and issued a notice of penalty for a sum of Rs.5,20,575/-. The said impugned order was communicated to the petitioner only on 5.1.2015. On receipt of the said order, the petitioner approached the 3rd respondent and the petitioner was directed to re-submit the objection. Though the petitioner has re-submitted objection on 14.1.2015 as directed by the 3rd respondent orally, within 10 days from the date of receipt of order dated 3.12.2014, no order has been passed thereafter. Aggrieved against the order dated 3.12.2014, the petitioner is before this Court.

4. Admittedly, the petitioner has got a right of appeal. The petitioner submits that objections were already filed before the 3rd respondent on 9.10.2014 and the same were not considered. Even thereafter, the petitioner re-submitted the objections on 14.1.2015. A perusal of the order shows that no objections were filed by the petitioner. Admittedly, personal hearing was not given to the petitioner before issuing the impugned order and the objections filed by the petitioner need be considered before passing the impugned order. Hence, this Court is of the view that on these grounds, the impugned order is liable to be set aside.

5. That apart, since the petitioner has got a right of appeal, and when this Court has directed the learned counsel for the petitioner to avail alternative remedy by approaching the appellate forum, the learned counsel for the petitioner has agreed to deposit 10% of the tax amount demanded in question within the time stipulated by this Court.

6. In view of the above submission made by the learned counsel for the petitioner, the impugned order dated 3.12.2014 is set aside and the matter is remitted back to the original authority to pass orders afresh on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner.

7 . It is made clear that the petitioner is directed to treat the impugned order as notice and appear before the 3rd respondent on 06.04.2015, on which date, the 3rd respondent is directed to give personal hearing to the petitioner. It is further made clear that the explanations/objections for the same shall be given by the petitioner on or before 06.04.2015, viz,, the date of personal hearing. The petitioner is further directed to deposit 10% of the tax amount as agreed before the date of personal hearing viz., 06.04.2015. After affording an opportunity of being heard in person to the petitioner on 06.04.2015 and taking note of his objections if any to be filed by him, appropriate orders on merits and in accordance with law shall be passed by the 3rd respondent. If the petitioner fails to comply with any one of the conditions viz., availing of opportunity of personal hearing on 06.04.2015 and depositing 10% of the tax amount demanded in the impugned order before 06.04.2015, the 3rd respondent is directed to pass appropriate orders on merits and in accordance with law based on the available records.

Accordingly, the Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1. The Secretary, Commercial Tax
Department, Government of Tamilnadu
Fort St. George, Chennai-600 009.

2. The Commissioner,
Rural Development and Panchayat Department,
Ezhilagam, Chepuak, Chennai-5.

3. The Commercial Officer,
Office of the Commercial Tax Officer
Cuddalore-607 001.

4. The Assistant Commissioner,
Office of the Assistant Commissioner,
Cuddalore-607 001.

+ 1 cc to Mr.V. Karunakaran, Advocate SR.13040
+ 1 cc to Special Government Pleader (T) Advocate SR.13060
+ 1 cc Government Pleader Sr.12931

RV(CO)
EU 21.03.2015

W.P.No.6217 of 2015