BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :30.10.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P(MD).No.19774 of 2015
and
M.P(MD)No.1 of 2015

M/s.Dhanalaskhmi Ginning Factory,
Represented by its partner N.S.K.Rajachidambaram
... Petitioner

Vs.

The Commercial Tax Officer,
Lalgudi Assessment Circle,
Lalgudi, Trichy. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records in TIN No.33083483172/2014-2015(upto October, 2014), dated 30.04.2015 and to quash the same as illegal, arbitrary and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass order afresh.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.R.Karthikeyan
Additional Government Pleader, takes notice

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ORDER

The Writ Petition has been filed praying for a Writ of Certiorarified Mandamus calling for the records in TIN No.33083483172/2014-2015(upto October, 2014), dated 30.04.2015 and to quash the same as illegal, arbitrary and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass order afresh.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondent.

3. By consent the Writ Petition itself is taken up for final disposal.

4. The case of the petitioner is that he is a dealer in Cotton and Cotton seeds and an assessee on the file of the respondent holding TIN No.330834483172 under the Tamilnadu Value Added Tax Act. On verification of the returns filed and web report, the respondent had issued a notice,

dated 28.11.2014 stating that there was difference between input tax and credit claimed in Annexure I in their return and tax paid in annexure II of the sellers. After receiving notice, due to the ill-health, the petitioner was not able to file his reply. In the meantime, on 30.04.2015, the respondent has passed the impugned order. Thereafter, the petitioner had approached the respondent on several occasions and requested to pass a revised order by considering the records filed by the petitioner. But the respondent had expressed his inability to revise the order. Hence, the petitioner has come forward with the present Writ Petition for the above stated relief.

5. The only submission made by the learned counsel for the petitioner is that the only provision permitting assessment for a part of the year on the basis of returns is provisional assessment under Section 25 of the TNVAT Act, 2006. But the same is impermissible after the expiry of the assessment year as held by the Court in the case of State of Tamilnadu v. Wander Ltd., 79 STC 421. He further submitted that before passing the impugned order, no opportunity of personal hearing was given to the petitioner.

6. The learned Additional Government Pleader appearing for the respondent has vehemently opposed the submission of the learned counsel for the petitioner stating that the impugned order does not suffer from any illegality.

7. Considering the facts and circumstances of the case, this Court passes the following order:-

> The petitioner firm is directed to remit 15% of the disputed tax imposed within a period of one week from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition stands set aside and the respondent is directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, the Writ Petition stands disposed of. No costs, consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

pm
To
The Commercial Tax Officer,Lalgudi Assessment Circle,
Lalgudi, Trichy.

+1CC to Mr.S.Karunakar Advocate Sr.No.64470
+1CC to Spl.Government Pleader Sr.No.64324

GJM/GSV/PM/3.12.2015-2P-4C

W.P.(MD)No.19774 of 2015
30.10.2015