BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.(MD)No.2101 of 2015
and
M.P.(MD)No.1 of 2015

M/s.Apple Constructions,
Represented by its Proprietor
T.Senthilkumar,
3, Anna Nagar, 2nd Cross Street,
Karur ...Petitioner

Vs.

The Assistant Commissioner (CT)
Karur (West Assessment Circle,
Karur ...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in his impugned proceedings of the respondent made in TIN 33603785623/2013-14, dated 31.01.2014 and TIN 33603785623/2013-14 dated 14.10.2014 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass a assessment order afresh after affording the opportunity of being heard as contemplated under Section 22(4) of the TNVAT Act.

For Petitioner : Mr.M.Azeem
For Respondent : Mr.A.Muthukaruppan
Addl.Govt.Pleader

O R D E R

The Writ Petition has been filed for a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in his impugned proceedings of the respondent made in TIN 33603785623/2013-14, dated 31.01.2014 and TIN 33603785623/2013-14 dated 14.10.2014 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass a assessment order afresh after affording the opportunity of being heard as contemplated under Section 22(4) of the TNVAT Act.

2. These Writ Petition has been filed mainly on one ground that the petitioner has not been given an opportunity of personal hearing inspite of the fact that he has specifically pleaded for personal hearing, which is mandatory, under Section 22(4) of TNVAT Act. Even though the petitioner requested for a personal personal hearing, yet it has not been given. Further, he would also contend that a Division Bench of this Court in *Tamil Nadu Vs. A.N.S.Guptha and Sons* reported in *(2011) 38 VST 45 (Mad)*, (in which I was a party) it has been held that granting of documents as well as personal hearing are not an empty formalities.

3. The learned counsel appearing for the petitioner would submit that the impugned order, dated 14.10.2014 is not in accordance with law and violates in principles of natural justice and therefore, the same is liable to be set aside.

4. The learned counsel Additional Government Pleader appearing for the respondent has submitted that the petitioner has not only given any reply for the 2nd show-cause notice and even at the time of inspection, they have not produced the invoices and therefore, granting an opportunity of personal hearing does not arise.

5. I have heard the learned counsel appearing on either side and perused the materials available on record.

6. At the outset, the only ground raised by the petitioner is that personal hearing has not been granted. Admittedly, the impugned order has been passed without giving an opportunity of personal hearing. It is mandatory that personal hearing is to be granted under Section 22(4) of the 'Act' and that vital fact has not been taken into consideration. Further in the judgment of the Division Bench reported in *(2011) 38 VST 45 (Mad)*, (cited supra) (in which I was a party) it has been held that giving the documents as well as granting of personal hearing is not an empty formality.

7. Therefore, the impugned order, dated 14.10.2014 has been passed without giving an opportunity of personal hearing is not correct. The learned counsel appearing for the petitioner would fairly submit that in order to prove his bonafide, the petitioner is ready to deposit 15% of the tax amount. Therefore, the respondent, on such deposit is being made by the petitioner, is directed to give an opportunity of personal hearing, which has not been granted, as per the provision and thereafter to pass appropriate orders, in accordance with law. Such deposit shall be made within a period of three weeks from the date of receipt of a copy of this order.

8. The Writ Petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Crl.side)

/True copy/

Sub Assistant Registrar

To
The Assistant Commissioner (CT)
Karur (West) Assessment Circle,
Karur.

+1CC to M/s.M.Azeem, Advocate in SR.7867

W.P.(MD)No.2101 of 2015
18.02.2015

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