IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 28.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.31713 of 2015 &

M.P.No.1 of 2015

Thiru.G.Palanivelu Contractors,
Periya Kadayampatti,
Omalur (T.K.),
Mettur Dam (DT). .. Petitioner

Versus

The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur,
Salem District. .. Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records on the files of the respondent in TIN.33833243218/2012-13, dated 11.06.2015 and quash the same.

For Petitioner : Mr.R.Senniappan

For Respondent : Mr.Manokaran Sundaram
Additional Government Pleader

O R D E R

Heard Mr.R.Senniappan, learned counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader appearing for the respondent.

2. The petitioner, who is registered contractor of the Public Works Department and who is registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed this Writ Petition, challenging the order of assessment for 2012-13.

3. Two grounds have been raised by the learned counsel for the petitioner. First is that the impugned order has been passed without affording an opportunity of personal hearing. In support of his contention, reliance has been placed on the decision of the Hon'ble Division Bench of this Court in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD) and another [(2007) 295 ITR 303].

4. The second ground raised by the learned counsel for the petitioner is that the petitioner had filed monthly returns and also paid tax and after due verification, the previous incumbent, who was functioning as the Assistant Commissioner (CT), Omalur Assessment Circle, was satisfied with the returns and issued certificates under Form S. The respondent erroneously observed in the impugned order that no monthly returns have been filed and that the petitioner has not reported the turnover liable to tax.

5. In the light of the fact that the petitioner has not been afforded an opportunity of personal hearing as mandated and as pointed out by the Hon'ble Division Bench in the above referred to decision, this Court is of the view that the matter should be decided afresh after due opportunity to the petitioner.

6. Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to afford an opportunity of personal hearing to the petitioner. While doing so, the respondent shall verify as to the correctness of the submissions made by the petitioner that they filed Return and paid taxes and that the officer concerned, having been satisfied with the same, had issued the certificate under Form S. The respondent can call for the entire files relating to the petitioner and thereafter proceed in accordance with law. The petitioner is at liberty to exercise their option under Section 6 of the said Act, which shall be considered on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

r n s

To
The Assistant Commissioner (CT),
Omalur Assessment Circle,
Omalur
Salem District

+1 cc to the Special Government Pleader Taxes sr.43251

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