IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.02.2016

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THE HON'BLE Mr. JUSTICE M.DURAISWAMY

W.P.No.4707 of 2004

M/s.Rudrapathy Mudaliar & Co.,
represented by S.Thandapani
Managing Partner
122, Audiappa Naicken Street,
Chennai - 600 079. ... Petitioner

Vs.

1.The Deputy Commissioner (CT) Chennai
(North) Division,
III Floor, PAPJM Buildings,
Greams Road, Chennai - 6.

2.The Commercial Tax Officer,
Sowcarpet I Assessment Circle,
Chennai - 1. ... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records on the file of the 1st respondent in RC.13959/2002/C3 dated 09.02.2004 and consequent notice dated 16.02.2004 issued by the 2nd respondent and quash the same as being without authority of law, contrary to the principles of natural justice and invalid and illegal and directing the 1st respondent to pass orders afresh in accordance with the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 and after giving a personal opportunity of being heared to the petitioner.

For Petitioner : Mr.C.Venkat Raman
For Respondents: Mr.Manoharan Sundaram,
Additional Government Pleader (Tax)

O R D E R

The petitioner has filed the above Writ Petition to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent in RC.13959/2002/C3 dated 09.02.2004 and consequent notice dated 16.02.2004 issued by the 2nd respondent and to quash the same and to direct the 1st respondent to pass orders afresh in accordance with the Tamil Nadu Sales Tax (Settlement of Disputes) Act, 2002 and after giving a personal opportunity of being hearing to the petitioner.

2.The main contention of the petitioner is that the 1st respondent has not taken into consideration the sum of Rs.2,14,031/- paid by them in the light of the 1st proviso to Section 6 (1) of the Act. Further, the learned counsel for the petitioner submitted that the 1st respondent, without following the provisions of the Sections 6(2) and 6(3) of the Act, had passed the impugned order rejecting the application. Further, the learned counsel contended that the 1st respondent has not given an opportunity to the petitioner to putforth their case. It was also contended by the petitioner that the impugned order has been passed by the respondent without considering the provisions of the Samadhan Scheme and the representations dated 08.02.2003 and 01.03.2003.

3.As per Section 6(1) of the Act, the Designated Authority shall take into consideration the amount of penalty paid by the applicant before filing the application and deduct the amount so paid by him from the amount determined under Section 6(1).

4.In the case on hand, the 1st respondent passed the order finding that the amount paid towards tax cannot be taken as payment towards penalty when the petitioner have in appeal as well as in the application in Form-I disputed the penalty levied under Section 22 of the Tamil Nadu General Sales Tax. The 1st respondent also found that any refund due to the applicant relating to another year cannot be adjusted towards the settlement amount.

5.On a perusal of the impugned order dated 09.02.2004, it is clear that the 1st respondent has not taken into consideration the contentions raised by the petitioner and summarily rejected the application even without affording an opportunity of hearing to the petitioner.

6.Mr.Manoharan Sundaram, learned Additional Government Pleader (Tax) appearing for the respondents fairly submitted that the respondents may be directed to consider the matter afresh and pass orders after taking into consideration the objections raised by the petitioner and after affording an opportunity of hearing to the petitioner.

7.At the time of admission of the Writ Petition, this Court, by order dated 03.03.2004, directed the petitioner to deposit 50% of the amount demanded in the impugned notice. The learned counsel for the petitioner submitted that pursuant to the orders of this Court, the petitioner had deposited 50% of the amount demanded in the impugned notice.

8.Having regard to the submissions made by the learned counsel on either side, I am of the view that the petitioner should be given an opportunity to putforth their case before the respondents and that the respondents should consider the objections raised by the petitioner and pass fresh orders on merits and in accordance with law. Accordingly, the impugned order dated 09.02.2004 is set aside and the matter is remanded back to the ***1st respondent** and the ***1st respondent** is directed to consider the objections raised by the petitioner and pass a fresh order after affording opportunity of hearing to the petitioner on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order. In the event of the respondents issuing certificate in favour of the petitioner, the respondents shall refund the deposit made by the petitioner pursuant to the order, dated 03.03.2004, made by this Court.

9.With these observations, the Writ Petition is allowed. No costs.

Sd/-
Assistant Registrar(CS VII)
Dated : 08.02.2016

***Amended as per Order of this Court dated 10.03.2016 and made in WP.4707 of 2004.**
Sd/- Assistant Registrar(CS VII)
Dated : 15.03.2016

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Commissioner (CT)
   Chennai (North) Division,
   III Floor, PAPJM Buildings,
   Greams Road, Chennai - 6.

2. The Commercial Tax Officer,
   Sowcarpet I Assessment Circle,
   Chennai - 1.

To be substituted to the Order already despatched on 29.02.16

+1cc to M/s. C. Venkataraman, Advocate, S.R.No.15267
+1cc to the Special Government Pleader(Taxes), S.R.No.15542

W.P.No.4707 of 2004

RSK(CO)
EU(11/02/2016)

CA(15.03.2016)