IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.12.2016

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE Dr.JUSTICE ANITA SUMANTH

W.A.No.1638 of 2016
and
C.M.P.No.20345 of 2016

H.Naveen Kumar
Represented by its Proprietor
H.Naveen Kumar
No.10 Krishna Pillai Street
Tindivanam-604 001
Villupuram District ... Appellant/Petitioner

vs

1. The State of Tamil Nadu
Rep. by its Secretary to Government
Department of Commercial Taxes and Registration
Fort St. George Chennai-600 009.

2. The Commissioner of Commercial Taxes
2nd Floor Ezhilagam
Chepauk Chennai-600 005.

3. The Commercial Tax Officer (Addl.)
Tindivanam Assessment Circle
Tindivanam, Villupuram. ... Respondents/Respondents

Prayer: Writ Appeal filed filed under Clause 15 of the Letters Patent against the order dated 28.9.2016 passed in W.P.No.34215 of 2016 Writ petition filed under Article 226 of the Constitution of India, keeping for a writ of certitiarified mandamus to call the records relating to the certitori of assessment order passed by the 3rd respondent in his proceedings in TIN No 33584724012/2013-14 dated 31/08/2016 received by the petitioner on 10.09.2016 and quash the same and to direct the 3rd respondent to afford an opportunity of personal hearing and pass fresh orders for the assessment year 2013-2014 ignoring the notices issued for the assessment year 2012-2013, provide the documents as requested by the petitioner on the file of this court.

For appellant : Mr.Adithya Reddy

For Respondents : Mr.Kanmani Annamalai, AGP(Taxes)

JUDGMENT

Heard the learned counsel appearing for the appellant and Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who takes notice on behalf of the respondents. The appellant is aggrieved against the direction of the learned Single Judge for remittance of 15% of the disputed tax as a pre-condition for the grant of opportunity of personal hearing before the respondent for de novo assessment proceedings.

2. A show cause notice was issued to the petitioner referring to various materials culled from the website of the Department of Commercial Taxes as well the Returns of other dealers and proposing to estimate the turnover of the appellant on the basis of the aforesaid material. Admittedly, a request was made by the appellant seeking the details sought to be relied upon. The details sought for are yet to be supplied.

3. The condition imposed is on the ground that several opportunities have been granted that have not been availed of by the appellant resulting in the passing of the order of assessment. Interestingly, we notice that the assessing officer notes the the request for the materials relied upon but concludes the assessment despite the same not having been supplied to the assessee. This is contrary to the accepted principles of natural justice. We are of the view that any number of opportunities are of no avail unless the materials on the basis of which the assessment order is proposed to be passed are supplied to the assessee and an opportunity given to him to counter/respond to the same. This, not being done in the present case, we dispense with the condition imposed.

4. The third respondent shall furnish the details sought for by the appellant vide letter dated 15.5.2015, on or before 25th January 2017. The appellant shall appear before the third respondent on 6.2.2017, file objections and be granted an opportunity of personal hearing prior to passing of appropriate orders.

5. The writ appeal stands allowed. Learned counsel appearing for both sides have taken note of the dates fixed above and no separate notice need be issued. No costs. The connected miscellaneous petition is closed.

s/d-
Assistant Registrar(CS-VI)

//True Copy//

Sub-Assistant Registrar

ssk.

To

1. The Secretary to Government
   The State of Tamil Nadu
   Department of Commercial Taxes and
   Registration
   Fort St. George Chennai-600 009.

2. The Commissioner of Commercial Taxes
   2nd Floor Ezhilagam Chepauk Chennai-600 005.

3. The Commercial Tax Officer (Addl.)
   Tindivanam Assessment Circle
   Tindivanam, Villupuram.

+1 CC to the Special Govt. Pleader(Taxer). sr 76309

+1 CC to M/s. S.P. Asokan, Advocate, sr 75994

W.A.No.1638 of 2016

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