IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.12398 of 2003

Tvl.Raja Oil Mills
rep. by its Prop Mr.Venkatachalapathy .. Petitioner

..Vs..

1.The Sales Tax Appellate Tribunal
(Addl.Bench) C.T.Buildings, Madurai 20.

2.The State of Tamilnadu, rep. by
The Appellate Asst.Commissioner (CT)
Madurai (North), C.T.Buildings, Madurai 20.

3.The Commercial Tax Officer
Palani-II, Palani.
.. Respondents

Prayer:
Writ 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 first respondent in M.T.A.No.881 of 2001 dated 16.10.2002, quash the same and direct the second respondent to take up the petitioner's appeal filed for the assessment year 1998-99(CST) and dispose of the same on merits.

For Petitioner : Mr.A.Chandrasekaran

For Respondents: Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.A.Chandrasekaran, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondents.

2.The petitioner has come forward with this Writ Petition, challenging the order passed by the first respondent, rejecting the Appeal filed by the petitioner as against the order passed by the second respondent, confirming the order of assessment.

3.The contention of the petitioner is that the assessment order alleged to have been served on one Mr.Kandasamy, who was the Accountant of the petitioner-Mills, is incorrect, as he was no way connected with the petitioner-Mills and has not been authorised by the petitioner to receive the order. However, both the first and second respondents disbelieved the stand taken by the petitioner and stated as the assessment order was served on Mr.Kandasamy, Accountant of the petitioner-Mills, it is proper service and on that ground rejected the Appeal.

4.When the petitioner has taken a specific stand that they have no such Accountant by name Kandasamy, the first and second respondent ought to have seen as to whether there was any proper authorisation for the said Kandasamy to receive the order of assessment on behalf of the petitioner-Mills. However, such exercise has not been done. Considering the fact that the petitioner is a small dealer, an opportunity can be granted to them to contest the assessment order on merits, this Court is of the view that subject to certain conditions, the petitioner may be permitted to agitate the matter on merits. This is more so because the assessment itself was completed exparte without issuing any notice.

5.In the light of the above, the Writ Petition is partly allowed and the orders passed by the first and second respondents are set aside, subject to the condition that the petitioner pays a sum of Rs.10,000/- (Rupees Ten Thousand only), being part of the disputed tax to the third respondent, within a period of three weeks from the date of receipt of a coy of this order. On effecting such payment, the petitioner is entitled to treat the order of assessment dated 17.12.1999 under the provisions of the Central Sales Tax Act, 1956 for the assessment year 1998-99, as a show cause notice and submit their objections, within a period of fifteen days thereafter and on receipt of the objections, the third respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The Sales Tax Appellate Tribunal
(Addl.Bench) C.T.Buildings, Madurai 20.

2.The Appellate Asst.Commissioner (CT)
The State of Tamilnadu,
Madurai (North), C.T.Buildings, Madurai 20.

3.The Commercial Tax Officer
Palani-II, Palani.

+1cc to M/S.P.Radhakrishnan, Advocate Sr.51337
+1cc to the Special Government Pleader Sr.51524

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srg 28/09/2016