IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.10.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.37352 of 2016 and

W.M.P.No.32003 of 2016

M/s.R.Gopinath Engineer Contractor,
Door No.72, Flat-C, 2nd Street,
Ram Nagar, North Extn, Vijaya Nagar,
Velacherry
Chennai-600 042 ... Petitioner

Vs

1.The State of Tamil Nadu,
rep.by the Secretary to the Government,
Department of Commercial Taxes,
Secretariat, Fort St.George,
Chennai-600 009

2.The Assistant Commissioner (CT),
Velacherry Assessment Circle,
Greenways Road, RA-puram,
Chennai-600 028 ... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India to issue Writ of certiorarified mandamus to call for the records of the 2nd respondent in the impugned order in TIN No.33250986832/2014-15, dated 08.09.2016, and quash the same and further direct the 2nd respondent pass fresh order after providing due opportunities of personal hearing to the petitioner.

For Petitioner : Mr.R.Sridhar

For Respondents :Mr.S.Kanmani Annamalai,A.G.P.

O R D E R

Heard Mr.R.Sridhar, the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, the learned Additional Government Pleader, who accepts notice on behalf of the respondents and with the consent of either side, the writ petition itself is taken up for final disposal.

2. The petitioner, who is a registered dealer on the file of the second respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has challenged the order of assessment, dated 8.9.2016, for the year 2014-15.

3. Though several grounds have been raised with regard to the merits of the assessment, the primary ground of challenge is that the impugned order has been passed without affording an opportunity to the petitioner, as no pre-revision notice was served on the petitioner and the order is in violation of principles of natural justice. Thus, to ascertain the correctness of this submission, the learned Additional Government Pleader was directed to get instructions from the respondent, as to whether the pre-revision notice was served on the petitioner, by order dated 25.10.2016. This order was passed taking into consideration the submission of the learned counsel for the petitioner that the petitioner was abroad and they have sufficient proof to show that during the relevant period, the petitioner was not in India.

4. Today, when the matter is taken up for hearing, the learned Additional Government Pleader would fairly submit that the notice sent to the petitioner has been returned as unclaimed. This is sufficient to hold that the petitioner was not issued with a notice and therefore, the impugned order is in violation of principles of natural justice.

5. Accordingly, the writ petition is allowed, the impugned order is set aside. The respondent is directed to issue a fresh notice to the petitioner, within a period of 7 days from the date of receipt of a copy of this order, giving 15 days' time to the petitioner to submit their objections and after receipt of the objections, shall afford an opportunity of personal hearing to the petitioner and re-do the assessment, in accordance with law. No costs. Connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

msk

To

1.The Secretary to the Government,
Department of Commercial Taxes,
Secretariat, Fort St.George,
Chennai-600 009

2.The Assistant Commissioner (CT),
Velacherry Assessment Circle,
Greenways Road, RA-puram,
Chennai-600 028

1 cc to M/s.R. Sridhar, Advocate, Sr. 61227
1 cc to Specivl Government Pleader (Taxes), Sr. 61551

W.P.No.37352 of 2016

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