IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2016

CORAM

THE Hon'ble Mr.JUSTICE M. DURAISWAMY

W.P.No.8213 of 2016
and
WMP No.7307 of 2016

Tvl.City Aircon,
rep by its Proprietor A. Ayub Ali
No.235, Nehru Street,
Tindivanam - 604 001 .... Petitioner

vs

1. The Deputy Commercial Tax Officer,
Tindivanam

2. The City Union Bank,
Tindivanam
..... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in Order dated 7.10.2015 in TIN No.33754723967/2012-13 and quash the same and consequently direct the respondent to revise its assessment order dated 10.10.2014 in TIN No.33754723967/2012-13 by considering the returns filed by the petitioner on 12.12.2014 under SEc.22(6) of the TNVAT Act, 2006.

For petitioner	:	Mr.Adithya Reddy
For respondents	:	Mr.S.Manoharan Sundaram AGP (T)

ORDER

The petitioner has filed the above writ petition to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in Order dated 7.10.2015 in TIN No.33754723967/2012-13 and quash the same and consequently direct the respondent to revise its assessment order dated 10.10.2014 in TIN No.33754723967/2012-13 by considering the returns filed by the petitioner on 12.12.2014 under Sec.22(6) of the TNVAT Act, 2006.

2. It is brought to the notice of this Court by the learned counsel for the petitoner that on the earlier occasion, in W.P No.4020 of 2015 dated 17.02.2015, this Court passed the following order:

> " 5. This Court makes it very clear that if the application has been filed by the petitioner under Section 22 (6) of the Act and if it was reached to the respondent before passing the impugned order, this Court directs the authority to keep the impugned order in abeyance and consider the petition which was said to have been sent on 12.12.2014 by the petitioner and if it is pending before him. The petitioner shall ensure that he sent the petition on 12.12.2014 by appearing in person before the authority and on producing the acknowledgement card to the effect that the authority has receivied the same. If the version of the petitioner is true and the petition has been received and pending before the authority, the impugned order shall be kept in abeyance until the orders passed in the said application said to have been made by the petitioner under Section 22(6) of the Act and the authority is directed to consider the same on merits and dispose of the same by passing appropriate orders in accordance with law. In case, the petitioner unable to satisfy the authority that the application has been made by him, it is made clear that the impugned order dated 9.01.2015 stands confirmed."

3. Inspite of the order passed by this Court on 17.02.2015, even without reading the order passed by this Court, the first respondent has passed the impugned order dated 7.10.2015, wherein, it has been stated as follows:

> " The assessment order was served on 23.10.2014. The dealer might have been filed the application under section 22(6) of the TNVAT Act 2006 on or before 22.11.2014 that is within 30 days from the receipt of the assessment order as per the provisions laid down in under Section 22 (6) of the TNVAT Act, 2006 in as much as the dealers have not

fulfill the conditions and filed the application within the stipulated time as provided under Section 22(6) of the said Act, the request of the dealer revoke the assessment under Section 22(6) of the Act cannot be complied with."

4. From the above, it is very clear that the first respondent had not applied his mind, while passing the impugned order. Therefore, on this ground alone, the impugned order dated 07.10.2015 is liable to be set aside and accordingly, it is set aside. The matter is remanded back to the first respnodent for fresh consideration. The first respondent is directed to decide the matter afresh, taking into consideration the order passed by this Court in W.P No.4020 of 2015 dated 17.02.2015 and until the order passed by the first respondent, the order of attachment made in respect of the bank account of the petitioner, shall be kept in abeyance. The first respondent shall consider the case of the petitioner and decide the matter afresh, on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. With these observations, the writ petition is disposed of. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Deputy Commercial Tax Officer,
Tindivanam.

2. The City Union Bank,
Tindivanam.

+1cc to M/S.Adithya Reddy, Advocate, S.R.No.13976
+1cc to the Government Pleader, S.R.No.14347

W.P.No.8213 of 2016

bvr(CO)
srg(14/03/2016)