BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.06.2016
CORAM :
THE HONOURABLE MR.JUSTICE NOOTY.RAMAMOHANA RAO
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

Writ Appeal (MD) Nos.999 to 1002 of 2016
and
C.M.P(MD)Nos.6015 to 6017 of 2016

Tvl.Rohini Agencies,
Rep by its Proprietor
Anil Kumar,
183, Vadivel Compound,
P.W.D Compound,
Nagercoil,Kanyakumari District. ... Appellant in all W.As

Vs.

The Commercial Tax Officer (FAC),
Nagercoil (Tower Junction) Assessment Circle,
Nagercoil, Kanyakumari District. ... Respondent in all W.As

Appeals filed under Clause 15 of the Letters Patent against the Common Order dated 20.11.2015 made in W.P.(MD).Nos.20581 to 20584 of 2015 on the file of this Court.

For Appellant : Mr.G.V.Vairam Santhosh

For Respondent : Mr.R.Karthikeyan,
(In all W.As.) Additional Government Pleader.

Prayer in WP(MD). 20581/ 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus calling for the records of the Respondent pursuant to his impugned order in TIN 33146141521/2011-12, dated 12.10.2015 and quash the same as illegal and unconstitutional and consequently direct the Respondent to afford an opportunity of personal hearing to produce documents before passing assessment order.

Prayer in WP(MD). 20582/ 2015 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records of the respondent pursuant to his impugned order in TIN 33146141521/2012-13, dated 12.10.2015 and quash the same as illegal and unconstitutional and consequently direct the respondent to afford an opportunity of personal hearing to produce documents before passing assessment

order.

Prayer in WP(MD). 20583/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus calling for the records of the Respondent pursuant to his impugned order in TIN 33146141521/2013-14, dated 12.10.2015 and quash the same as illegal and unconstitutional and consequently direct the Respondent to afford an opportunity of personal hearing to produce documents before passing assessment order.

Prayer in WP(MD). 20584/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified mandamus calling for the records of the Respondent pursuant to his impugned order in TIN 33146141521/2014-15, dated 12.10.2015 and quash the same as illegal and unconstitutional and consequently direct the Respondent to afford an opportunity of personal hearing to produce documents before passing assessment order.

JUDGMENT

(Judgment of the Court was delivered by NOOTY.RAMAMOHANA RAO,J)

All these four writ appeals could be disposed of by this common judgment.

2.The grievance of the appellant/writ petitioner is that though he sought for time to respond to the pre-assessment notice received in the matter, but however, because of his hospitalization, he could not avail such an opportunity effectively. Consequently, the Assessing Officer, has passed orders immediately on the expiry of the time granted for responding to the pre-assessment notice.

3.It is brought to our notice that the assessee was hospitalised between 30.09.2015 and 17.10.2015. Though this fact could have been brought to the notice of the Assessing Authority and seek for additional time but still the assessee has failed to bring the same to the notice of the Assessing Authority. In those circumstances, the Assessing Authority construed that the assessee has nothing more to offer in response to the pre-assessment notice dated 24.08.2015 and hence, finalised the assessment order and passed the same on 12.10.2015. Assailing the same, the writ petitions have been filed which were dismissed by the learned single Judge. Aggrieved by the same, the present writ appeals have been filed.

4.Heard the learned counsel for the appellant/writ petitioner and the learned Additional Government Pleader for

Commercial Taxes.

5.We have found no infirmity in the view taken by the learned single Judge as well as by the Assessing Authority who passed the order of assessment on 12.10.2015. But nonetheless, we feel that if the assessee has been prevented for reasons and factors beyond his control, in responding to the pre-assessment notice dated 24.08.2015 such a hardship encountered by the assessee is a mitigating factor which can be taken note of and into consideration.

6.In that view of the matter, we set aside the order passed by the Assessing Authority on 12.10.2015 and we grant time to the appellant/writ petitioner upto 14.07.2016 to make available his objections/material in support of any such objections, and upon submission of such material, the same may be taken into account and consideration and appropriate order of assessment be passed. If the assessee fails to make available his objections/material, by 14.07.2016, the order passed on 12.10.2015 stands revived automatically and it be given effect to without any further reference to this Court. It goes without saying that the objections/material which the assessee is required to submit before 14.07.2016 must be submitted in the office of the Assessing Authority and obtain an inward section endorsement and any delaying tactics adopted by the assessee in the form of sending the material on 14.07.2016 through registered post, speed post and courier service etc., will not enure to the benefit of the assessee.

7.The writ appeals are accordingly disposed of. No costs. Consequently, C.M.P(MD)Nos.6015 to 6017 of 2016 are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS)

To
The Commercial Tax Officer (FAC),
Nagercoil (Tower Junction) Assessment Circle,
Nagercoil, Kanyakumari District.

+4cc to Mr.G.V.Vairam Santhosh, Advocate, Sr.NNo.33925
+1cc to the Special Government Pleader, Sr.No.34440
sms
JM/SK-SKN/SAR-III/06.07.2016/3P-7C

Writ Appeal (MD) Nos.999 to 1002 of 2016
and
C.M.P(MD)Nos.6015 to 6017 of 2016
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