BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :09.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)No.10216 of 2016
and
W.M.P.(MD)No.7981 of 2016

M/s. Gee Expo Traders Private Limited,
represented by its Managing Director,
No.9-C, Birds Road,
Cantonment, Trichy-
620001. .. Petitioner

vs.

The Assistant Commissioner(CT),
Palakkarai-I Assessment Circle,
Trichy. .. Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records in TIN 33513520717/2012-13 dated 28.1.2016 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass an assessment order afresh by considering the petition dated 22.02.2016 filed under Section 84 of the TNVAT Act after affording opportunity of being heard to the petitioner as contemplated under Section 22(4) of the Tamilnadu Value Added Tax Act 2006.

For Petitioner :Mr.S.Karunakar

For Respondent :Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner M/s Gee Expo Traders Private Limited, represented by its Managing Director suffered under an order passed by the respondent under Section 22(4) of the TNVAT Act, 2006 for payment of tax due at 14.5% on the sales returns for a sum of Rs.32,79,445/- which comes to Rs.4,75,521/-. Aggrieved by the same, the present Writ Petition has been filed by the petitioner.

2. Assailing the impugned order, the learned Counsel appearing for the petitioner would submit that the respondent, while passing the impugned order under Section 22(4) of the TNVAT Act, 2006, has violated Section 22(4) of the Act, which mandates a reasonable opportunity to be given to the petitioner herein. When the petitioner is a dealer in genuine Maruthi Spare parts and Accessories and also an assessee under the files of the respondent bearing TIN No.33513520717,a notice was issued dated 04.12.2015 stating that on scrutiny of Form WW filed by the petitioner, it was found that the petitioner had reported sales return to an amount of Rs.32,79,445/-. Hence, the notice proceeded to say that the respondent proceeded to treat the sales return as well as tax due at 14.5%. On receipt of the said notice, the petitioner approached the supplier with regard to the issuance of credit notes since the above process was not completed in due time and when it was beyond his control, he was not able to reply.

3. Considering the fact that the petitioner has failed to file his reply to the notice dated 04.12.2015, the proposal was confirmed under Section 22(4) of the TNVAT Act, 2006. As there was no personal hearings given to the petitioner, many of the documents which were ready for presentation before the respondent, could not be filed. Since the personal hearing was not given as mandated under Section 22(4) of the TNVAT Act, 2006, a grave prejudice has been caused to the petitioner, he pleaded

4. Adding further, it is contended by the learned Counsel for the petitioner that even after filing an application under Section 84(4) of the Act seeking rectification, at least a direction may be given to consider the said application.

5. The learned Additional Government Pleader would submit that the rectification application filed under Section 84(4) of the Act is also not legally maintainable for the reason that there is no error apparent on the face of the record shown by the petitioner. I agree with this submission.

6. Therefore, this Court is not inclined to entertain either of the prayer of the petitioner for the reason that when the petitioner was issued by the notice on 04.12.2015, for the reasons known to him he neither submitted his reply nor sought for time to present his reply or sought for time to take part in the personal hearings. Therefore, the petitioner is not entitled to complain that there was a violation of Section 22(4) of the TNVAT Act, 2006. In any event, if the petitioner is aggrieved by the impugned order, he is entitled to file an apple before the Appellate Authority. Accordingly, the petitioner is given two weeks' time to file the appeal from the date of receipt of a copy of this order, if so advised.

7. With the above observations, this Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petition is also dismissed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To
The Assistant Commissioner(CT),
Palakkarai-I Assessment Circle,
Trichy.

+1cc to Mr.S.Karunakar, Advocate Sr.No.29304
+1cc to special Government Pleader SR.No.29666

sm:DB:01.07.2016:3P/4C

W.P.(MD)No.10216 of 2016
09.06.2016