BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.02.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P.(MD)No.119 of 2016
and
W.M.P.(MD).No.97 of 2016

Tvl. Shri Jothilingam Pattu Mahal (P) Ltd.,
rep. by its Director Thiru.A.Senthil Kumar,
No.657, Main Road,
Kovilpatty - 628 501,
Tuticorin District. .. Petitioner

Vs.

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

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer (Main),
C.T. Buildings, Ettayapuram Road,
Kovilpatty - II. .. Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings in TIN 33035942004/2014-15, dated 27.11.2015, received by the petitioner on 30.11.2015, passed by the 3rd respondent, quash the same and direct the third respondent to go through the objections filed by the petitioner on 15.09.2015, accept the documents filed by the petitioner, if found correct, accord a personal hearing after issuing notice and then to pass fresh order, if any, for the assessment year 2013-14.

For petitioner ... Mr.K.Vadivelu
For respondents ... Mr.R.Karthikeyan,
Addl. Government Pleader

ORDER

The present Writ Petition has been filed to quash the proceedings in TIN 33035942004/2014-15, dated 27.11.2015, received by the petitioner on 30.11.2015, passed by the 3rd respondent and to direct the third respondent to go through the objections filed by the petitioner on 15.09.2015, accept the documents filed by the petitioner, if found correct, accord a personal hearing after issuing notice and to pass fresh order, if any, for the assessment year 2013-14.

2. The only objection raised by the petitioner is that as per Section 24(2) of the TNVAT Act, 2006, no personal hearing was given to the petitioner in spite of the objections filed by the petitioner on 15.09.2015.

3.When the matter is taken up for hearing today, the learned counsel for the petitioner submitted that to show their bonafide, the petitioner is prepared to deposit 10% of the disputed tax.

4. The learned Additional Government Pleader fairly submitted that objections were made by petitioner. But, no personal hearing was given to them before passing the impugned order.

5. Heard the submissions made on both sides.

6. In ***SRC Projects Private Limited vs. Commissioner of Commercial Taxes, Chennai and another*** reported in ***33 VST 333(Mad) in paragraph No.24***, the Honourable Division Bench of this Court, has observed as follows:

> ***"It is well-settled that the existence of an alternative remedy does not oust the jurisdiction of a writ court under article 226 of the Constitution. Such jurisdiction is plenary in nature. But the existence of alternative remedy operates as an automatic restrain on the discretion of the Writ Court in the exercise of its jurisdiction. But law in this aspect is well-settled and there are well known exceptions where a writ petition is entertained despite non-exhaustion of statutory remedy. If any of the exceptions exists, it is open to the writ Court to exercise its jurisdiction. Those exceptions are if a writ petition has been filed for an enforcement of any fundamental right where there has been a violation of principles of natural justice at the instance of an inferior authority or where the proceedings are wholly without jurisdiction or ultra vires the statute under which such proceedings have been initiated(see***

Whirlpool Corporation v. Registrar of Trade Marks [1998] 8 SCC 1 at paragraphs 14 and 15, pages 9 and 10 of the Report), a Writ Petition can be entertained."

7. In view of the above said judgment of the Honourable Division Bench, the impugned order is liable to be set aside. Hence, the following order is passed:

> "The petitioner firm is directed to remit 10% of the disputed tax in question to the third respondent within a period of three weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petition shall stand set aside and the third respondent is directed to provide an opportunity of personal hearing and pass appropriate orders after considering the objections raised by the petitioner, on merits and in accordance with law, within a period of four weeks, thereafter."

8. In the result, the Writ Petition is allowed with the aforesaid condition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(RTI)

/True copy/

Sub Assistant Registrar

To

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

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer (Main),
C.T. Buildings, Ettayapuram Road, Kovilpatty - II.

+one cc to M/s.A.S.Mujbur Rahman, Advocate in SR.No.7332
+one cc to The Special Government Pleader in SR.No.7428

CSL/SKS-RR/16.02.2016/2P/6C

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