



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.09.2016

CORAM

WEB COPY

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.17034 of 2016
and
W.M.P (MD) No.12353 of 2016

Tvl.Winmeen,
Rep. by its Proprietor A.Akbar Ali,
S/o.K.G.Abdul Khadar,
No.15/2/129D, Dindigul Road,
Obulapuram, New Ayakudi,
Palani-624 613,
Dindigul District.

... Petitioner

vs.

The Assistant Commissioner (CT),
Commercial Tax Department,
Palani-1, Dindigul District.

... Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the respondent herein in TIN.33625282322/2013-14 dated 27.11.2014 and quash the same.

For Petitioner : Mr.T.Bashyam
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The proceedings of the respondent/Assistant Commissioner (CT), Commercial Tax Department, Palani-1, Dindigul District, dated 27.11.2014, fixing the total and taxable turnover of the dealer for the year 2013-14 at Rs.3,96,851/- is under challenge.

2.The learned counsel for the petitioner would submit that the impugned order was passed without affording opportunity of hearing and therefore, the order is liable to be set aside.

3.The learned counsel for the respondent would submit that perusal of the order itself would reveal that opportunity of hearing has been already given and there is a specific mention in the order that the petitioner have not filed any objection, despite notice having been issued inviting their objection.



4.No doubt, notice has been issued to the petitioner before passing the impugned order. But the learned counsel for the petitioner invited the attention of this Court to the Medical Certificate dated 16.07.2016, issued by Dr.R.Rajkumar, Sankararaman Clinic, Dindigul Main Road, New Ayakudi, Palani Taluk, in which, it is stated that the petitioner was suffering from the disease of 'hardened Psychosis' from 12.09.2014 to 06.07.2016 and he was treated continuously in private Clinic. Pointing out the Medical Certificate, it is the contention of the learned counsel for the petitioner that the petitioner was not in a position to appear before the authority to express his grievance and therefore, the opportunity afforded could not be utilised by the petitioner and therefore, an opportunity of hearing must be given.

5.It is pointed out by the learned Additional Government Pleader appearing for the respondent that as per Section 51 of the TNVAT Act, initial time for filing appeal is 30 days and after expiry of 30 days, along with an application to condone the delay, appeal can be filed within another 30 days, thus, totally 60 days is permissible and the petitioner having not filed any appeal within that period, has now chosen to take a plea that no opportunity of hearing is given. This contention may not be correct, considering the same, in the context of the medical records submitted.

6.The petitioner had been suffering from hardened Psychosis, and therefore, it might not have been possible for him to state his objection, as the nature of the disease would not have permitted him to appear and state his objection. Under such circumstances, it is fair and proper that the respondent should give another opportunity of personal hearing to the petitioner herein. It is made clear that this order shall not be cited as a Precedent and this order is passed, having regard to the peculiar facts and circumstances of the present case and the nature of the disease suffered by the petitioner herein.

7.Therefore, the impugned order is set aside. The matter is remitted back to the respondent and the respondent shall give opportunity of hearing including personal hearing to the petitioner and then pass orders on merits and in accordance with law.

Accordingly, this writ petition is allowed. No costs. Consequently, W.M.P(MD)No.12353 of 2016 is closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar



To

The Assistant Commissioner (CT),
Commercial Tax Department,
Palani-1, Dindigul District.

+ 1 CC TO Mr.T.BASHYAM, ADVOCATE IN SR No. 51725
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 51945

NBI

TE/DB : 23/09/2016 : 3P/4C

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