BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.17172 of 2016
and
W.M.P(MD)No.12450 of 2016

TVL.VSS TIN INDUSTRIES,
Represented by its Partner
V.S.S.James,
Aged about 66 years,
S/o.V.S.Sebasthiya Nadar,
5/229 Sri Ram Theatre Road,
Allampatti,
Virudhunagar-626 001. ... Petitioner

vs.

1)The Commissioner of Commercial Taxes,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2)The Assistant Commissioner (CT)-3,
Commercial Taxes Buildings,
Madurai Road,
Virudhunagar. ... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33725762223/2012-13 dated 11.01.2016 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh after giving adequate opportunity to petitioner.

For Petitioner : Mr.R.Narayanan

For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed, calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33725762223/2012-13 dated 11.01.2016 and quash the same and consequently direct the 2nd respondent to re-do the assessment afresh, after giving adequate opportunity to petitioner.

2.The petitioner is an Industry dealing with manufacturing and trading TIN containers; during the assessment year 2012-13, the petitioner filed returns reporting total and taxable turnover of Rs.2,63,25,433/-; the 2nd respondent accepting the said returns of the petitioner passed the deemed assessment order dated 31.10.2013; however, vide impugned order dated 11.01.2016, the Assessing Officer has wrongly reversed the input tax credit to the tune of Rs.1,08,812/- under Section 19(4)(i) of the TNVAT Act and therefore, the petitioner has challenged the said order in this writ petition.

3.It is the grievance of the petitioner that despite his written request made to give one month time for the purpose of presenting the case, the respondents did not consider his request and therefore, he lost the opportunity of presenting his case. The medical certificate dated 05.12.2015 showing that the petitioner was not in a position to appear before the respondent is enclosed in the typed set of papers.

4.Considering the health condition of the petitioner and also considering the fact that no order has been passed on the request of the petitioner for adjournment, this Court is of the view that opportunity should have been given to the petitioner before passing any order on merits.

5.Under such circumstances, the impugned proceedings of the 2nd respondent in TIN No.33725762223/2012-13 dated 11.01.2016 is quashed and the matter is remanded back to the respondents and subject to payment of 25% of the disputed tax amount, by the petitioner within a period of two weeks from the date of receipt of a copy of this order, the 2nd respondent shall provide opportunity of hearing to the petitioner including personal hearing and to take a decision in accordance with law on merits. It is made clear that this case shall not be cited as a precedent, as this order has been passed considering the health condition of the petitioner as seen from the medical certificate dated 05.12.2015.

Accordingly, this Writ Petition is allowed, subject to conditions. No costs. Consequently, W.M.P(MD)No.12450 of 2016 is closed.

Sd/-
Assistant Registrar(AE)
/True copy/

Sub Assistant Registrar

To
1)The Commissioner of Commercial Taxes,
Office of the Special Commissioner and
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005.

2)The Assistant Commissioner (CT)-3,
Commercial Taxes Buildings,
Madurai Road,
Virudhunagar.

+1 cc to M/s.R.Narayanan, Advocate in SR.No.55985
+1 cc to The Special Government Pleader in SR.No. 56084

nbi
CSL/EM-MPA/21.10.2016: 3p/5c

W.P(MD)No.17172 of 2016
26.09.2016