BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.09.2016
CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.17398 of 2016
and
W.M.P(MD)No.12621 of 2016

M/s.Sri Venkateswara Hardwards,
Rep. by its Partner Mr.R.Rajendran,
No.336, Railway Feeder Road,
Virudhunagar. ... Petitioner

vs.

1)The Assistant Commissioner (CT)-II
Virudhunagar.

2)The Appellate Deputy Commissioner(CT),
Virudhunagar. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33895740644/2012-13 and quash the proceedings dated 01.08.2016 as it is unlawful and in violation of the principles of natural justice and further direct the 1st respondent to grant an opportunity for fresh adjudication and personal hearing after providing all the relevant documents and records to the petitioner.

For Petitioner : Mr.R.D.Ganesan
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

This Writ of Certiorarified Mandamus has been filed to call for the records of the respondent in TIN No.33895740644/2012-13 and quash the proceedings dated 01.08.2016 as its is unlawful and in violation of the principles of natural justice and further direct the 1st respondent to grant an opportunity for fresh adjudication and personal hearing after providing all the relevant documents and records to the petitioner.

2.The petitioner is a dealer in paints and hardwares and for the assessment year 2012-13 (TNVAT), the petitioner has originally reported the total and taxable turnover at

Rs.68,85,214/- and assessed accordingly under the self assessment scheme as per Section 22(2) of the Act. Subsequently, the 1st respondent issued a pre-revision notice dated 23.06.2016 under Section 27 of the TNVAT Act, on the ground that as per cross verification using internet web domain, it was noticed that the petitioner has short reported purchases in the assessment year 2012-2013.

3.According to the petitioner, the 1st respondent has arrived at the difference of purchase turnover as per web-report, without verification of the purchase details in the returns filed by the petitioner and ultimately passed the impugned order dated 01.08.2016 under Section 22(4) along with levy of penalty under Section 22(5) of the TNVAT Act.

4.The learned counsel for the petitioner would submit that even though an opportunity was given by the respondents, due to unavoidable circumstances that opportunity was missed out by the petitioner and therefore, one more opportunity should be given to the petitioner and till such time, entire proceedings must be stayed.

5.The learned Additional Government Pleader appearing for the respondents would submit that the respondents will provide an opportunity to the petitioner, provided there is an undertaking by the petitioner to pay the entire amount of disputed tax.

6.When the issue has to be decided by the authority after giving opportunity, there cannot be an order directing the petitioner to pay the entire amount of disputed tax. However, subject to the condition of paying 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 impugned order dated 01.08.2016 shall remain set aside and the matter would be remanded back to the 1st respondent with a direction to give an opportunity to the petitioner including personal hearing and to dispose of the matter within four weeks thereafter.

With the above direction, this Writ Petition is disposed of. No costs. Consequently, W.M.P(MD)No.12621 of 2016 is closed.

Sd/
Assistant Registrar(A.E.)

/TRUE COPY/

Sub Assistant Registrar

To

1)The Assistant Commissioner (CT)-II
Virudhunagar.

2)The Appellate Deputy Commissioner(CT),
Virudhunagar.

+1cc to M/S.R.D.Ganesan, Advocate in SR.No.54903.

+1cc to Special Government Pleader
Madurai Bench of Madras High Court,
Madurai in SR.No. 54711.

W.P(MD)No.17398 of 2016
21.09.2016

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