



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.09.2016

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THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD) No.17429 of 2016

and

WMP(MD) No.12626 of 2016

M/s.Greens Land Restaurant,
rep.by its Partner
K.M.Syed Jalaluthin

... Petitioner

-vs-

1. The Assistant Commissioner (CT)
Tenkasi.

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

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Certiorarified Mandamus to call for the records of the respondent in TIN No.33185684920/2014-15 and quash the order dated 11.05.2016 as it is unlawful and in violation of the principles of natural justice and further direct the respondent to consider the objections along with records filed by the petitioner in all perspective on its merits in terms of the decision of this Court reported in WP(MD) No.20023/2014.

For Petitioner : Mr.R.D.Ganesan

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

This writ petition has been filed to quash the order dated 11.05.2016 passed by the first respondent and consequently direct the respondents to consider the objections along with records filed by the petitioner in terms of the decision of this Court in WP(MD) No.20023 of 2014.

2.Heard learned counsel appearing for the petitioner and the learned Additional Government Pleader, who takes notice for the respondents. By consent the writ petition itself is taken up for

final disposal at the admission stage.

3. The petitioner is running a restaurant. For the assessment year 2014-15 (TNVAT), the petitioner has reported the total and taxable turnover and assessed accordingly under self assessment scheme as per section 22(2) of the Act. The first respondent issued the notice dated 06.04.2016 for revision of assessment under Section 27 of the TNVAT Act. The petitioner has filed a detailed objection stating that the impugned proposal is illegal and unsustainable in law.

4. The grievance of the petitioner is that the first respondent without considering the objections filed by the petitioner dated 22.04.2016, passed the impugned order on 11.05.2016 and it has been served on one of the partners of the petitioner firm and it has not been communicated to the present petitioner and therefore, he was not able to take steps to file an appeal within the prescribed period. Under such circumstances, the impugned order is liable to be set aside.

5. The learned Additional Government Pleader appearing for the respondents objected this Writ Petition on the ground that remedy is open to the petitioner to challenge the impugned order by way of an appeal and filing of appeal is also barred by limitation.

6. Even though alternative remedy is available, as the order passed is devoid of reasons, it can be challenged in the writ proceedings.

7. The learned counsel appearing for the petitioner has relied upon the order passed by this Court in WP(MD)No.20023 of 2014, dated, 10.12.2014 in which, at paragraph - 8, it has been held as follows:

"8. It is to be noted that this Court has perused the impugned order dated 02.12.2014 passed by the second respondent and is of the considered view that in the reference portion, the second respondent had mentioned about the reply filed by the petitioner/dealer on 24.11.2014 for the notice issued by the office dated 17.11.2014. Unfortunately, the reply of the petitioner/dealer dated 24.11.2014 was not dealt with by the second respondent at the time of passing the impugned order."

8. In this case also, the first respondent has not considered the detailed reply submitted by the petitioner dated 22.04.2016 and therefore the non-speaking order is liable to be set aside. Writ petition is allowed and the impugned order dated 11.05.2016 is set aside. However, the second respondent is directed to look into the reply of the petitioner dated 22.04.2016



and deal with the same at the time of passing fresh orders, after providing necessary opportunity of hearing to the petitioner. The above said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP(MD)No.12626 of 2016 is closed.

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Sd/-
Assistant Registrar (Crl.side)

/True Copy/

Sub Assistant Registrar

To

1. The Assistant Commissioner (CT)
Tenkasi.
 2. The Appellate Deputy Commissioner (CT),
Tirunelveli.
- + 1 CC TO Mr.R.D.GANESAN, ADVOCATE IN SR No. 56328

MJ
TE/GSV-PM : 18/11/2016 : 3P/4C

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