



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.09.2016
CORAM

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THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD) No.18552 of 2016
and
WMP(MD) No.13433 of 2016

Tvl.Eswari Stores,
rep.by its Proprietor
M.Vasudevan

... Petitioner

-vs-

1. The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commissioner Tax Officer - II,
Dindigul - II, Assessment Circle,
Commercial Tax Office,
Sub Collector Office Road,
Dindigul - 624 001.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN No.33775220305/2012-13 dated 09.03.2016 and quash the same and to consequently direct the 2nd Respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner	: Mr.B.Rooban
For Respondents	: Mr.R.Karthikeyan Additional Government Pleader

ORDER

This Writ petition has been filed to quash the impugned proceedings of the second respondent dated 09.03.2016 and consequently direct the second respondent to re-do the assessment afresh, after giving adequate opportunity to the petitioner.

2. Heard the learned counsel 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 stage of admission.



3.The petitioner is running several shops including a medical store. At the time of filing returns, apart from the regular list of purchase in annexure - I, a separate list of purchases, in respect of a medical shop has also been filed, which had been included in the purchase list of annexure - I and it was duly assessed. The second respondent has passed the impugned assessment order, by wrongly presuming that the purchase list with regard to medical store is not included in annexure - I and revised the assessment by falsely levying tax on the same again branding the same as suppression and the same amounts to double taxation. Challenging the impugned assessment order, the present Writ petition has been filed.

4.The learned counsel for the petitioner submitted that before passing the impugned assessment order, the second respondent has issued notice dated 25.01.2016. But, due to illness of the petitioner, he was not able to file any reply for the said notice and he could not file statutory appeal within time and therefore the impugned order passed is liable to be set aside.

5.The medical certificate issued to the petitioner on 14.09.2016 has been annexed with in the typed set of papers, which reads as under:

"This is to certify that M.Vasudevan, aged 50 years, S/o.Mall Nadar (late) residing at 16/9B, Vivekananda Nagar, Dindigul, was suffering from chronic hepatitis (Jaundice) from 10.11.2015 to 14.09.2016. He was under continuous treatment and advised complete bed rest."

6.The specific contention pointed out by the petitioner is that no suppression is caused by the petitioner and therefore, he has got arguable case before the authorities. In order to show bona fide, the petitioner has expressed his willingness to deposit 25% of the disputed tax amount within a period of four weeks.

7.Therefore, the petitioner is directed to deposit 25% of the disputed tax amount within a period of four weeks from the date of receipt of a copy of this order. On such payment being made, the matter will stand remitted back and the respondents shall be given an opportunity to the petitioner including personal hearing and redo the assessment in accordance with law.

8.The Writ Petition is disposed of with the above



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direction. No costs. Connected WMP(MD)No.13433 of 2016 is closed.
Sd/
Assistant Registrar(A.E.,)

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/TRUE COPY/

Sub Assistant Registrar

To

1. The Commissioner of Commercial Taxes,
O/o. the Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.
2. The Commissioner Tax Officer - II,
Dindigul - II, Assessment Circle,
Commercial Tax Office, Sub Collector Office Road,
Dindigul - 624 001.

+1cc to Special Government Pleader in SR.No.57483.

W.P (MD) No.18552 of 2016
29.09.2016

mj
msm/sk-skn/sar3/07.11.16/p3/4c