BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.11.2016

CORAM
THE HON'BLE Dr.JUSTICE S.VIMALA
W.P(MD) No.22325 of 2016
and
W.M.P.(MD) No.15998 of 2016

M/s.Gokulam Petroleum
Rep thro its Proprietor
M.Lakshmi Devi ... Petitioner

-vs-

Commercial Tax Officer(Main)
Office of the Commercial Tax Officer,
Sattur,
Virudhunagar District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent's order in TIN.33415783588/2015-16 dated 20.10.2016 and quash the same and consequently direct the respondent to consider and pass orders on the petitioner's application dated 13.10.2016 submitted under Section 22(6)(a) of the Tamil Nadu Value Added Tax Act after giving personal hearing to the petitioner within the time stipulated by this Court.

For Petitioner : Mr.M.Mohamed Sherbudeen
For Respondent : Mr.R.Karthikeyan
Additional Government Pleader

O R D E R

This Writ Petition has been filed, seeking to quash the order passed by the respondent dated 20.10.2016 and consequently direct the respondent to consider the application of the petitioner dated 13.10.2016.

2.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader, who takes notice for the respondent. By consent the writ petition itself is taken up for final disposal at the admission stage.

3.According to the petitioner, she is a dealer of Hindustan Petroleum Corporation Ltd., and she is prompt in submitting returns and paying necessary tax without any default.

4.On 06.01.2016, the respondent visited the premises of the petitioner and based on the said inspection, a pre -assessment notice was sent to the petitioner on 25.07.2016, calling for objections with regard to the stock differences found in the premises. Due to ill-health of the petitioner, she was not in a position to submit her objections and unable to appear in-person before the respondent. In the meantime, the respondent has passed the assessment order dated 27.09.2016, demanding the tax amount, mentioned therein. Against which, the petitioner/dealer submitted an application dated 13.10.2016, requesting for re-assessment, as provided under Section 22(6)(a) of the Tamil Nadu Value Added Tax Act. The petitioner/dealer had stated in the application that because of her health condition she was not able to provide supporting documents immediately in order to prove her claim.

5.But, the respondent has passed the impugned order stating that there is no question of fresh assessment, because the dealer did not file any document to prove that the situation was beyond her control. Challenging this order, this Writ petition has been filed.

6.The learned counsel for the petitioner submitted that opportunity of personal hearing had not been afforded to her. Therefore, the matter must be remitted back to the respondent with a direction to give an opportunity of hearing to the petitioner.

7.The learned Additional Government Pleader appearing for the respondents insisted upon payment of 10% of the tax amount to be paid, as a precondition for fresh rehearing.

8.But this is a case where the petitioner has filed the application under Section 22(6)(a) of the Tamil Nadu Value Added Tax Act, in time, i.e., within a period of 30 days from the date of service of the assessment order. Therefore, the assessing authority should have provided an opportunity of hearing to the petitioner, which has not been done in this case.

9.Under such circumstances, this writ petition is allow and the impugned order dated 20.10.2016 is set aside and the matter is remitted back to the respondent with a direction to provide an opportunity of hearing including personal hearing to the petitioner and decide the matter afresh within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, WMP(MD)No.15998 of 2016 is closed.

Sd/-
Assistant Registrar(crl side)

/TRUE COPY/

Sub Assistant Registrar

To

Commercial Tax Officer(Main)
Office of the Commercial Tax Officer,
Sattur
Virudhunagar District.

+1 cc to MR. M. MOHAMED SHERBUDEEN, ADVOCATE, SR NO:71758

+1 cc to Special Government Pleader, SR NO:72697

mj

sva/em/jmp/18.01.2017/3p/4c

WP(MD)No.22325 of 2016
23.11.2016