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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 24.11.2016

CORAM

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P(MD)No.22363 of 2016

M/s.Hameed and Co.,
rep.by its Proprietor N.Abdul Hameed ... Petitioner

vs.

The Assistant Commissioner (CT),
Mailamchandai II Assessment Circle,
Trichy - 20. ... Respondent

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified mandamus calling for the records in TIN 33813501055/2013-14 dated 15.09.2016 and to quash the same as illegal arbitrary and further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and thereafter to pass orders afresh.

For Petitioner : Mr.S.Karunakar

For Respondent : 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 33813501055/2013-14 dated 15.9.2016 and to quash the same as illegal, arbitrary and further to direct the respondent to afford an opportunity of personal hearing and thereafter to pass orders afresh.

2.Heard the learned counsel 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 stage of admission.

3.The petitioner is a dealer in iron and steel and assessee on the file of the respondent. For the year 2013 - 2014, the petitioner was deemed to have been assessed by the acceptance of the returns filed by the petitioner. The respondent issued notice dated 21.07.2016, whereunder it is stated that the petitioner had

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effected purchases of goods from registered dealers within the state, but the same were not reported in the returns and thus, it was proposed to determine the deemed sale value by adding gross profit along with the penalty under Section 27(3) of the TNVAT Act.

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4.The grievance of the petitioner is that though notice was served on the petitioner, due to his health condition, reply was not filed. As there was no reply from the petitioner, the respondent confirmed the proposal vide the impugned order dated 15.09.2016. Challenging the same, this writ petition has been filed.

4.1.Yet another grievance is that opportunity of personal hearing was not given.

5.The learned Additional Government Pleader for the respondent would submit that opportunity of hearing was given to the petitioner and it is only the petitioner, who did not make use of the opportunity and that is also reflected in the order passed by the respondent.

6.The learned counsel for the petitioner submitted that on account of health condition, the petitioner was not able to appear before the concerned authority and therefore, one more opportunity i.e. Sufficient opportunity should be given to put forth his contentions before the assessing authority.

7.The learned Additional Government Pleader appearing for the respondent insisted upon 10% of the tax to be paid to show their bona fides, and subject to that condition, the matter may be remitted back to the respondent.

8.Under such circumstances, subject to the condition of the petitioner paying 10% of the tax amount disputed by the petitioner, within a period of two weeks from the date of receipt of a copy of this order, the impugned order dated 15.09.2016 shall remain set aside and the matter will be remitted back to the respondent with a direction to give an opportunity of hearing to the petitioner including personal hearing and to decide the matter afresh within four weeks thereafter.

9.With the above direction, this Writ Petition is disposed of. No costs. Consequently, W.M.P(MD)No.16027 of 2016 is closed.

Sd/-
Assistant Registrar (CO)

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Sub Assistant Registrar

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To
The Assistant Commissioner (CT),
Mailamchandai II Assessment Circle,
Trichy - 20.

+1 CC to M/s.S.KARUNAKAR, Advocate, SR No. 72996.

MJ
PSM/CM-MSA/03.02.2017/3P/3C

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