BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.24041 of 2016
and
W.M.P(MD)No.17342 of 2016

M/s.THAMILS AGENCY,
Represented by its Proprietor G.Tamilselvan,
No.30/37/3, AJR Complex,
Ananthagiri 1st Street,
Kodaikanal. ... Petitioner

vs.

The Commercial Tax Officer (FAC),
Commercial Tax Building,
Kodaikanal. ... Respondent

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 on the file of the respondent in TIN 33695320744/2015-16 dated 14.11.2016 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording a opportunity of being heard to the petitioner by considering the reply dated 31.10.2016 filed by the petitioner and after furnishing the copies as required by the petitioner within such time as may be directed by this Hon'ble Court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33695320744/2015-16, dated 14.11.2016, and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh, after affording a opportunity of being heard to the petitioner, by considering the reply dated 31.10.2016, filed by the petitioner and after furnishing the copies as required by the petitioner, within a time frame to be fixed by this Court.

2.According to the petitioner, he was issued with the revision notice dated 26.08.2016, for which, he has given a detailed reply dated on 31.10.2016, but, without considering the same, the impugned order has been passed arriving at the tax amount at Rs.32,558/-, stating that the dealer has not filed any objection, even though objections were called for.

3.In the notice dated 26.08.2016, the petitioner was asked to submit his detailed objection within 15 days, failing which, orders will be passed. The petitioner is stated to have sent a letter to the respondent on 20.09.2016, asking for further time, on the ground that his relative is in the hospital. Thereafter, on 31.10.2016, a reply has been sent by the petitioner, by speed post and the said letter has been delivered on 15.11.2016. The explanation dated 31.10.2016 has been booked on 10.11.2016 and received on 15.11.2016, by the respondent.

4.According to the petitioner, the reply sent by post, was booked in the post office on 10.11.2016 and postal endorsement shows that on 11.11.2016 at 04.54 p.m, item delivery attempted Straight Window Next and thereafter, the item was delivered on 15.11.2016. Saturday and Sunday namely, 12.11.2016 and 13.11.2016 were holidays. Even before the reply could reach the respondent, the impugned order has been passed, determining the tax amount at Rs.32,558/-.

5.Admittedly, the petitioner has not replied within a period of 15 days from the date of revision notice dated 26.08.2016. The petitioner has taken his sweet time to reply and now shifting the blame on the postal department cannot be accepted. In any event, before the reply could reach the respondent, the impugned order has been passed. Apart from this, the petitioner has got a right of appeal, wherein, the submissions including waiver of the amount can be raised. Hence, the petitioner is given liberty to file appeal within 30 days from the date of receipt of a copy of this order and it is open to the appellate authority to consider the said appeal on merits and in accordance with law.

With the above observation and direction, this Writ Petition is disposed of. No costs. Consequently, W.M.P(MD)No.17342 of 2016 is closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer (FAC),
Commercial Tax Building,
Kodaikanal.

Copy To:-

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR No. 81483
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 81425

NBI
TE/PV : 03/01/2017 : 3P/5C

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