



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.12.2016

CORAM :

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P(MD)No.24442 of 2016

and

W.M.P(MD)No.17637 of 2016

M/s.J.B Board Private Limited,
Represented by its Director S.N.Syed Hussain,
89/2D, New Jothi Complex,
Kayathar Road,
Pazhamkottai, Kalugumalai,
Tirunelveli District.

... Petitioner

vs.

The Commercial Tax Officer,
Commercial Tax Building,
Sankarankoil.

... 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 33055660887/2013-14 dated 28.11.2016 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 11.10.2016 along with documents filed 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 (Taxes)

ORDER

The petitioner has filed this writ petition for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33055660887/2013-14 dated 28.11.2016 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 an opportunity of being heard to the petitioner, by considering the reply dated 11.10.2016 along with documents filed by the petitioner within a time frame to be fixed by this Court.

2.According to the petitioner, he has given a detailed reply to the notice dated 30.09.2016 received by him on 14.10.2016 by post bearing No.A RT775236110IN, dated 13.10.2016. The



petitioner relied upon a decision made in W.P.No.2769/15 dated 05.02.2015 (Indus Teqsite Private Limited, Rep by its Manager, Siruseri, Chennai vs. The Commercial Tax Officer, Chennai) rendered by me in the Principal Seat at Madras and contended that when there is no opportunity given, this Court set aside the impugned order therein and directed the authorities concerned to pass final order, after affording an opportunity of being heard to the petitioner therein.

3. However, the learned Additional Government Pleader appearing for the respondent submitted that the abovesaid decision may not be applicable to the facts of this case, on the ground that the petitioner was issued with the notice, for which, a detailed reply was submitted on 02.09.2016 which was considered by the respondent and that there is no infirmity in the impugned order.

4. The contention of the learned Additional Government Pleader cannot be acceded, as the reply dated 02.09.2016 mentioned in the impugned order is with regard to the first notice dated 12.08.2016 and subsequently, yet another notice dated 30.09.2016 was sent to the petitioner, calling for further details, for which, a reply was sent by the petitioner on 11.10.2016. Admittedly, the reply dated 11.10.2016 has not been considered. Hence, I am of the view that no opportunity has been given to the petitioner before passing the impugned order. Hence, the impugned order is set aside and the petitioner is directed to appear before the authorities concerned on 29.12.2016 and submit further objections, if any. If no reply is given or the petitioner does not appear before the authorities concerned on the said date, it is open to the authorities to take into account the available records before them, including the reply sent by the petitioner by registered post on 11.10.2016 and arrive at a conclusion and thereafter pass appropriate orders.

With the above direction, this Writ Petition is allowed. No costs. Consequently, W.M.P(MD)No.17637 of 2016 is closed.

Sd/
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar.

To
The Commercial Tax Officer, Commercial Tax Building, Sankarankoil.

+1CC to M/S.S.Karunakar, Advocate, SR.No. 82350

+1CC to the Special Government Pleader, SR.No. 82987

W.P(MD)No.24442 of 2016