BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.02.2016
CORAM:
THE HONOURABLE MR.JUSTICE B.RAJENDRAN
W.P.(MD)Nos.3184 and 3185 of 2016
and
C.M.P.(MD)Nos.2791 and 2792 of 2016

Greenslam International,
Rep.by its Proprietor M.Natraya Prabhu,
11, V.O.C.Nagar, North Street,
Bodi, Theni District.
... Petitioner in both the W.Ps.

Vs.

The Assistant Commissioner (CT) (FAC),
Bodinayakanur Assessment Circle,
Bodinayakanur.
... Respondent in both the W.Ps.

Prayer in both the W.Ps.: The Writ petition is filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33685081596/2012-2013 & 2013-2014 dated 18.11.2015 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass an assessment order afresh after affording reasonable opportunity of personal hearing to the petitioner.

For Petitioner : Mr.M.Azeem for Mr.S.Karunakar
For Respondent : Mr.R.Karthikeyan, AGP

COMMON ORDER

This Writ petition has been filed to quash the proceedings in TIN 33685081596/2012-2013 & 2013-2014 dated 18.11.2015 issued by the respondent and direct the respondent to pass an assessment order afresh after affording reasonable opportunity of personal hearing to the petitioner.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

3.The only grievance of the petitioner is that for the assessment notice issued by the respondent / department, the petitioner sought time till 31st November 2015. Though the same has been acknowledged by the respondent, in the impugned order dated 18.11.2015, it has been stated that time has been restricted only upto 05.11.2015, however, the said restriction has not been communicated to the petitioner, which in violation of the principles of natural justice.

4.The learned counsel for the petitioner relied on a decision of the Supreme Court reported in *1997 (106) STC 123 (V.G. Textiles Pvt. Ltd., Vs. Commercial Tax Officer, Udumalpet (North))* and the relevant portion of which reads as follows:

> "Held accordingly, that though earlier, time might have been granted to the appellant, on the date the order in question was passed, time granted to it for filing objections had not expired.

The order of assessment has been passed in gross violation of the principles of natural justice, denying the appellant the right to file objections to the proposed assessment. The order was liable to be quashed."

5.Therefore, he would contend that the petitioner must have been given an opportunity to submit his reply and in order to show the petitioner's bona fide, he undertakes to deposit 20% of the tax demand.

6.The learned Additional Government Pleader for the respondent would contend that time has been restricted only upto 05.11.2015.

7.In view of the decision of the Supreme Court (cited supra) though time is granted, the same was not intimated to the petitioner, definitely it is against the principles of natural justice.

8.It is further contended by the learned counsel for the petitioner that it is totally an exempted tax, therefore, there is 15 days time for submitting reply. However, without waiting for the same, the impugned order is passed. He further submitted the petitioner is ready to pay 20% of the tax demanded and thereafter, the authority may consider the case of the petitioner.

9.In view of the above, the petitioner is directed to pay 20% of the tax demanded as undertaken and agreed on or before 10.03.2016 and on such deposit the impugned orders are set aside and the matter will be remitted back to the authorities concerned for giving an opportunity. On such payment being made, the authorities are directed to consider and pass appropriate orders on merits and in accordance with law. The payment of money is a condition precedent.

10.The Writ petitions are allowed accordingly. No costs. Consequently, connected C.M.Ps.are closed.

Sd/-
Assistant Registrar (CO Dept.)I/c

/True copy/

Sub Assistant Registrar

To
The Assistant Commissioner (CT) (FAC),
Bodinayakanur Assessment Circle, Bodinayakanur.

+2 CC to Mr.S.KARUNAKAR, Advocate, SR No.9056 & 9057
+1 CC to the Special Government Pleader, SR No.9428

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