BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.04.2016
CORAM

THE HON'BLE MR.JUSTICE B.RAJENDRAN
W.P(MD).No.7419 of 2016
and
W.M.P.(MD).No.6242 of 2016
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M/s The Tirunelveli District Consumers
Coop. Whole Sale Stores Ltd., 02181,
Nellaicoop Supermarket)
rep. by its Managing Director,
R.Ajayakumar, aged about 56 years,
S/o Rathinasamy, No.25,C, S.N.High Road,
Thirunelveli Junction 627 001. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT)
Thirunelveli Junction Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District - 627 002. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the 2nd respondent in Asst. TIN 33625541603/13-14 dated 23.03.2016 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For petitioner : Mr.R.Veeramanikandan
For respondents : Mr.R.Karthikeyan
AGP

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ORDER

The grievance of the petitioner society is that after filing necessary reply to the original show-cause notice, they have asked certain particulars pertaining to the non-payment of tax by their other seller agencies and further, they asked for personal hearing before passing the impugned order. On the contrary, without granting the particulars required by the petitioner society and without granting the personal hearing, straightaway the impugned order has been passed, as if no reply has been given. Thus, the impugned order is error apparent on the face of the record. The reply of the petitioner society has been duly acknowledged by the respondent department. Therefore, the petitioner society would contend that the impugned order is liable to be set aside.

2. The learned Additional Government Pleader appearing for the respondents would submit that the personal hearing is not mandatory.

3. A perusal of the records would show that two replies have been given by the petitioner society on 15.06.2015 and 04.01.2016. However, in the impugned order, it has been stated that no reply has been given by the petitioner society, which is a factual error.

4. In the above said circumstances, the impugned order is set aside and the writ petition is allowed. The matter is remitted back to the respondents for fresh consideration, after giving personal hearing to the petitioner society, and pass appropriate orders, on merits and in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(A.E.)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
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Chennai - 600 005.

2.The Assistant Commissioner (CT)
Thirunelveli Junction Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District - 627 002.

+1cc to M/S. B.Rooban, Advocate SR NO: 23797/16
+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 24212/16
skn
JA/SKS-RR/SAR.III/6.6.16/2P-5C

W.P(MD).No.7419 of 2016
26.04.2016