



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 28.04.2016

CORAM

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

W.P(MD)Nos.8651 to 8653 of 2016 &
WPMP(MD)Nos.6912 to 6917 of 2016

W.P(MD)No.8651 of 2016:

Ex. Lubes House,
Annikarai,
Kanyakumari District,
Rep.by its Proprietor S.Sooraj,
Now at Krishnakripa TC 42/904(19)
Sree Nagar, Vallakadavu P.O,
Thiruvananthapuram.

... Petitioner

Vs

The Commercial Tax Officer,
Kuzhithurai,
Kanyakumari District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN No.33115183878/2006-07 dated 21.08.2013 and quash the same as illegal and in violation of the principles of natural justice and consequently direct the respondent to consider the representation of the petitioner dated 05.08.2015 conduct a fresh enquiry and grant to the petitioner an opportunity of personal hearing and pass further orders as this Court may deem fit and proper.

W.P(MD)No.8652 of 2016:

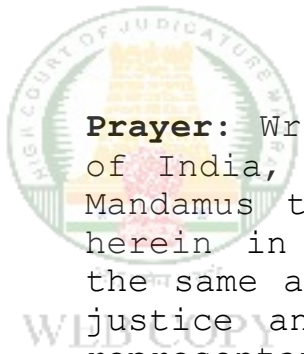
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Rep.by its Proprietor S.Sooraj,
Now at Krishnakripa TC 42/904(19)
Sree Nagar, Vallakadavu P.O,
Thiruvananthapuram.

... Petitioner

Vs

The Commercial Tax Officer,
Kuzhithurai, Kanyakumari District.

... Respondent



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN No.33115183878/2007-08 dated 21.08.2013 and quash the same as illegal and in violation of the principles of natural justice and consequently direct the respondent to consider the representation of the petitioner dated 05.08.2015 conduct a fresh enquiry and grant to the petitioner an opportunity of personal hearing and pass further orders as this Court may deem fit and proper.

W.P(MD)No.8653 of 2016:

Ex. Lubes House,
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Sree Nagar, Vallakadavu P.O,
Thiruvananthapuram.

... Petitioner

Vs

The Commercial Tax Officer,
Kuzhithurai,
Kanyakumari District.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent herein in TIN No.33115183878/2009-10 dated 21.08.2013 and quash the same as illegal and in violation of the principles of natural justice and consequently direct the respondent to consider the representation of the petitioner dated 05.08.2015 conduct a fresh enquiry and grant to the petitioner an opportunity of personal hearing and pass further orders as this Court may deem fit and proper.

For Petitioners
in all WPs

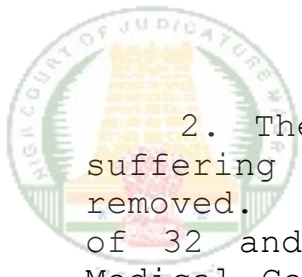
:Mr.M.Azeem

For Respondents
in all WPs

:Mr.R.Karthikeyan
Additional Government Pleader

COMMON ORDER

Since the issue involved in both the writ petitions is similar, they are taken up together for hearing and disposed of by this common order.



2. The petitioner is a patient. According to him, he was suffering from left testicular tumor and his testicles were removed. Thereafter he went to depression being in a tender age of 32 and he is continuously taking treatment and as per the Medical Certificate, he has come to normal behavior for the past six months only. He also closed down the business in the year 2010. He has also shifted his residence to his native place in Parasala at Kerala. Therefore, he was not aware of the proceedings. Only in the year 2014, he came to know about the service of the notice, whereby, he was called upon to furnish the details and submitted his explanation and made a representation. Thereafter, due to continued depression, he could not proceed with the matter. In the meanwhile, the impugned orders were passed.

3. According to him, the amounts mentioned in the impugned orders are not correct, as there is no record to show that the petitioner has made purchase. He has closed down the business in the year 2010, itself. He has not given any opportunity to establish the same. Hence, he contended that the order of assessment has to go. To show his *bona fide*, the petitioner is willing to deposit of 15% of the tax amount and if he is given one more opportunity.

4. The learned Additional Government Pleader appearing for the respondents submitted that everything has got limitation. The impugned demand is only arrears of amount.

5. But in a peculiar circumstances of these cases, where the man who was suffering from testicular tumor at the age of 32 and due to depression, he closed down his business even in the year 2010, this Court is of the view that sympathetic consideration should be given to the petitioner. In 2014, the petitioner was not aware of the demand proceedings. He has thereafter, took rest for a considerable period as per the advise of the doctor and now only, he has come to normal position little bit. The discharge summary produced shows that his testicular were removed and thus, the delay on the part of the petitioner is properly explained and justified.

6. In view of the peculiar circumstances of the case that the petitioner has not been given reasonable opportunity of personal hearing; the notice was served on the last residing address of the petitioner; the petitioner was suffering from testicular tumor at the age of 32 and closed down his business and shifted his residence in Parasala at Kerala in 2010 itself, the impugned orders are set aside. However, in view of the submission of the petitioner that he is willing to deposit 15% of the demand in each of the assessment order, the petitioner is directed to deposit the same, within a period of six weeks from the date of receipt of a copy of this order and on such payment, the authorities shall afford a reasonable opportunity of hearing to the petitioner and



pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter.

7. With the above directions, these writ petitions are disposed of. No costs. Consequently, the connected Miscellaneous petitions are closed.

Sd/-
Assistant Registrar (W)

/True copy/

Sub Assistant Registrar

TO
The Commercial Tax Officer,
Kuzhithurai, Kanyakumari District.

+3 CC to M/S.T.AZEEM, Advocate, SR No.24743 to 24745
+3 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.25826 to 25828

**W.P(MD)Nos.8651 to 8653 of 2016 &
WPMP(MD)Nos.6912 to 6917 of 2016
28.04.2016**

gsr
SH/NGM-MP/SAR-III:06.06.2016:4P/8C