IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2017

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Writ Petition No.33183 of 2017
and
WMP No.36597 of 2017

M.Sunthararajan [PETITIONER]

Vs

The State Tax Officer,
Attur (Rural) Assessment Circle,
Attur Taluk,
Salem District. [RESPONDENT]

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified mandamus to call for the records relating the proceedings dated 01.09.2017 made in TIN/33113262529/2013-2014 passed by the respondent and quash the same and further direct the respondent to permit the petitioner to file the detailed objections and thereafter pass orders in accordance with law as per the provisions of the Tamilnadu Value Added Tax Act, 2006.

For Petitioner : Mr.A.Rajakumar

For Respondents : Mr.K.Venkatesan
Government Advocate

O R D E R

Mr.K.Venkatesan, learned Government Advocate takes notice for the respondents. By consent, the main writ petition itself is taken up for final disposal.

2.This writ petition is filed challenging the order dated 01.09.2017, passed by the respondents revising the assessment of the petitioner in respect of the Assessment Year 2013-2014, thereby demanding a sum of Rs.7,16,814/- as tax due from the petitioner. On such reversal, A notice in Form-'O' was also issued with the impugned communication for effecting such payment.

3.The main grievance before this court is that the impugned order is passed without affording reasonable opportunity to the petitioner to put forth his case against the proposal to revise the assessment.

4.Learned counsel for the petitioner submitted that though a notice of proposal was served on the petitioner, due to his ill health at the relevant point of time, he was not able to attend the enquiry on the said day. Therefore, he contended that the respondent ought to have given further opportunity to the petitioner before passing the impugned order. I do not think that the petitioner is justified in making such contention before this Court, especially, when he has not disputed the issuance of notice of proposal dated 14.07.2017. When such being the case, the fault is on the petitioner in not attending the enquiry on the stipulated time. Assuming that the petitioner was unwell on that particular day, he could have very well contacted the respondent on the very next day or any other subsequent day and explained the authority about his inability to attend the enquiry on that day. No such material is placed before this Court to show that the petitioner has made any such attempt. Therefore, I find that the request for issuing one more opportunity to the petitioner as a matter of right is without any basis or justification. However, as the present impugned order was passed without further discussion as to how such quantum was arrived at, this Court is of the view that the petitioner can be given a final opportunity to agitate the matter before the respondent by giving his explanation. At the same time, the petitioner has to be put on some term, as he has already missed the first opportunity of hearing. Therefore, this writ petition is allowed and the impugned order is set aside and the matter is remitted back to the respondent for reconsidering the whole issue subject to the following terms:

a) The petitioner shall pay 30% of the demand within a period of four weeks from the date of receipt of a copy of this order;

b) On receipt of such payment, the respondent will issue fresh notice to the petitioner and after giving due opportunity of hearing to the petitioner, pass fresh order of assessment on merits and in accordance with law;

c) The payment of 30% of the demand, as directed in this order, is without prejudice to the contention of either parties at the time of adjudication.

No costs. The connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-iv)

//True Copy//

Sub Assistant Registrar

vri

To
The State Tax Officer,
Attur (Rural) Assessment Circle,
Attur Taluk,
Salem District.

+1cc to the Government Pleader, S.R.No.90761
+1cc to Mr.A.RAJAKUMAR, Advocate, S.R.No. 90491

W.P.No.33183 of 2017

RR(CO)
TR(29/01/2018)