BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2017

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THE HONOURABLE MR.JUSTICE M.DURAISWAMY

W.P(MD)No.1315 of 2017
and
W.M.P(MD)Nos.1092 & 1093 of 2017

Tvl.Lego Marbles,
Rep. By its Proprietor,
M.Micheal Lego ... 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 Deputy Commercial Tax Officer,
Ambasamudram Assessment Circle,
Commercial Taxes Office,
No.1/22, Thilagarpuram, Main Road,
Ambasamudram,
Tirunelveli District - 627 401. ... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in TIN No.33325622957/12-13, dated 29.04.2016 and quash the same.

For Petitioner : Mr.R.Veeramanikandan

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

The petitioner has filed the above Writ Petition to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN No.33325622957/12-13, dated 29.04.2016 and to quash the same.

2.It is the case of the petitioner that the second respondent issued a notice proposing to reverse ITC to levy tax under Section 12 of the Tamil Nadu Value Added Tax Act and to levy penalty under

Section 27(3) of the said Act. According to the petitioner, the levy of tax under Section 12 of the said Act does not arise and penalty is also not attracted. Further, it is the case of the petitioner that the petitioner was not given an opportunity of personal hearing under Section 27(4) of the said Act. Therefore, the impugned order is liable to be set aside.

3.Mr.N.S.Karthikeyan, learned Additional Government Pleader taking notice for the respondents submitted that since the petitioner is in arrears of huge amount, they may be directed to pay a portion of the amount in the event of the impugned order is being set aside and fresh opportunity is being given to the parties.

4.Having regard to the submissions made on either side and accepting the case of the petitioner, I set aside the impugned order, dated 29.04.2016 and permit the matter back to the second respondent for fresh consideration on condition that the petitioner paying 25% of the tax demanded by the second respondent in the impugned order, dated 29.04.2016 within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the second respondent is directed to issue fresh notice to the petitioner in accordance with law and the petitioner shall give his explanation to the notice to be issued by the second respondent and after the receipt of the reply, the second respondent is directed to decide the matter afresh, after giving an opportunity of personal hearing to the petitioner, on merits and in accordance with law.

5.With these above observations, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

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

2.The Deputy Commercial Tax Officer,
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