BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 06.06.2017
CORAM :
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P.(MD) No.7868 of 2017
and
W.M.P(MD).No.6093 of 2017

Tvl. Vaccine Point,
Represented by its partner:
R.Gokulrani,
No.36, Pechiamman Padithurai,
Naicker New Street,
Madurai-625 001. ... Petitioner

Vs.

The Assistant Commissioner (Commercial Taxes)(FAC),
West Tower Street Assessment Circle,
Madurai. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in TIN.33024802599/2014-2015 dated 28.02.2017, quash the same and direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show-cause Notices dated 09.12.2016 and 02.02.2017 and after verifying the books of accounts of the petitioner.

For Petitioner :Mr.A.Chandrasekaran

For Respondent :Mr.R.Karthikeyan
Additional Government Pleader.

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ORDER

This Writ Petition has been filed by the petitioner for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in TIN.33024802599/2014-2015 dated 28.02.2017, and to quash the same and to direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show-cause notices dated 09.12.2016 and 02.02.2017 and after verifying the books of accounts of the petitioner.

2. The grievance of the petitioner is that the impugned assessment order has been passed by the respondent without affording an opportunity to the petitioner, to file reply and objection against the show-cause notices. The petitioner is a dealer in Medicines and an assessee on the file of the respondent

herein under Tamil Nadu Value Added Tax Act, 2006 and Central Sales Tax Act,1956.

3. The petitioner is a Partnership Firm, where the deponent namely Tmt.R.Gokularani, wife of late Thiru.K.Rajaram and her son Thiru R.Giridhar were partners. Since the mother is very old it was only her son who looked after the entire affairs of the business. It is submitted by the deponent that she had no knowledge about the day today affairs of the business. It appears that her son fell ill in 2016, and despite continued treatment, her son died on 14.02.2017. It was on account of the, sudden demise of her son, she states that she was upset and suffered a great mental pain.

4. In this circumstances, the impugned proceedings was initiated by the respondent, by which huge tax was proposed to be levied based on information collected from other end dealers through Department's web. Though show case notices were served on the staff of the petitioner, the petitioner could not take appropriate step to file reply and objection against the show cause notices due to serious illness of her son, who was looking after the business. Ultimately the petitioner suffered the impugned order by which she was asked to pay a huge sum of Rs.1,26,54,456/- towards tax and penalty which is about 65% of the tax levied.

5. Considering the facts and peculiar circumstances in the present case, this Court was inclined to direct the learned Special Government Pleader to get instructions regarding the possibility of giving one more opportunity to the petitioner to file objection to the show cause notices dated 09.12.2016 and 02.02.2017, so that fresh order can be passed on merits in the interest of justice. The learned Special Government Pleader fairly conceded, after getting instruction from the respondents.

6. Hence this Court allow this Writ Petition and the impugned assessment order, passed by the respondent dated 28.02.2017, is set aside and the respondent is directed to pass fresh order after affording opportunity to the petitioner to file objection against the show cause notices dated 09.12.2016 and 02.02.2017, and after verifying the records. The learned Counsel for the petitioner submitted that, though the petitioner was presumably served with the show cause notices, the petitioner had not received and did not have copies of the same. Without going to the merits of the submission, in the interest of justice, this Court is inclined to direct the respondent to give a copy of the show cause notices dated 09.02.2016 and 02.02.2017 forthwith. The petitioner is directed to file their reply / objection to the show cause notices within a period of two weeks from the date of receipt of the copies of the show cause notices. The respondent shall pass fresh order after hearing the petitioner and considering the documents that may be filed by her.

7. With the above directions, this Writ Petition is allowed. Consequently, the connected W.M.P.(MD) No.6093 of 2017 is closed. No costs.

Sd/-
Assistant Registrar(Writs)

/ True Copy /

Sub Assistant Registrar(C.S.)

To

The Assistant Commissioner (Commercial Taxes)(FAC),
West Tower Street Assessment Circle, Madurai.

+1 CC TO MR.A.CHANDRASEKARAN, ADVOCATE, SR NO.58755

+1 CC TO SPECIAL GOVERNMENT PLEADER SR NO.58866

cmr/gsp
MAS/JC/SAR2:20.06.2017:3P-4C

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