IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.14949 of 2007
and
M.P.No.1 of 2007

C.Wilson ...Petitioner

Vs.

1. The Deputy Commercial Tax Officer
Vepery Assessment Circle
Chennai - 600 007.

2. The Deputy Commercial Tax Officer (Rural)
Dindigul. ...Respondents

Prayer: This Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records on the file of the 1st respondent in TNGST A.No.0521533/1997-98 dated 16.02.2000 and quash the same as illegal, violative of the Principles of Natural Justice, since the same and the pre-assessment notice were not served as contemplated in Rule 52 of the TNGST Rules.

For Petitioner : Mr.P.Radhakrishnan

For Respondents : M/s.G.Dhana Madhri
Government Advocate (Taxes)

O R D E R

Challenging the assessment order dated 16.02.2000 passed by the first respondent for the year 1997-98, the petitioner has come up with the present writ petition.

2.The main ground of attack made by the learned counsel for the petitioner is that the pre-assessment notice has not been served on the petitioner and only the demand notice in O.D.R. in Form 30 under the Revenue Recovery Act and Form 1 alone have been served on him. The learned counsel specifically contended that though the correct postal address of the petitioner is very much available with the respondents, for the reasons best known to them, they failed to serve a copy of the pre-assessment notice on the petitioner, as contemplated in Rule 52 of the TNGST Rules, enabling him to proceed further. Hence, the assessment order, without serving a copy of the pre-assessment notice on the petitioner, according to the learned counsel, is arbitrary, illegal and violative of the principles of natural justice.

3.Per contra, the learned Government Advocate appearing for the respondents submitted that the pre-assessment notice as well as the exparte order came to be served on the petitioner by way of affixture. The learned Government Advocate has also produced a copy of the letter in R.O.C.No.1893/2010/A3, dated 08.11.2010, sent by the second respondent, containing remarks about the present writ petition. Thus, according to her, the assessment order is perfectly valid in law.

4.This Court, after hearing both sides and upon perusal of the documents, more particularly, the communication dated 08.11.2010 now, produced on the side of the respondents, which has not at all dealt with the aspect of service of pre-assessment notice to the petitioner, comes to a conclusion that the assessment order, which is impugned herein, passed by the first respondent is arbitrary, illegal and in violation of the principles of natural justice, as no pre-assessment notice has been served on the petitioner. Hence, the impugned assessment order is liable to be set aside.

5.Accordingly, this writ petition stands allowed by setting aside the assessment order dated 16.02.2000 for the year 1997-98 passed by the first respondent. The matter is remanded back to the respondents for fresh consideration. The petitioner be served a copy of the notice and on receipt of the same, shall submit his objections, if any, within a period of two weeks from the date of receipt of a copy of the same. On such submission, the respondents shall consider the same and pass appropriate orders, on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of six weeks thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

ksa-2/vsi2

To
1. The Deputy Commercial Tax Officer
Vepery Assessment Circle, Chennai - 600 007.

2. The Deputy Commercial Tax Officer (Rural)
Dindigul.

+1cc to Mr.P.Radhakrishnan, Advocate sr.84804
+1cc to Special Government Pleader sr.no.85559

W.P.No.14949 of 2007

nr 10/04/2019