IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.09.2018

CORAM

THE HON'BLE MR. JUSTICE K.RAVICHANDRABAABU

W.P.No.24966 of 2018
and
W.M.P.No. 29009 of 2018

Sri Bala Traders,
Represented by its Proprietor,
Mr.S.Balasubramanian,
No.251, Thiruvalluvar Salai,
S.R.Thirumana Nilayam Complex,
Puducherry - 605 013 ... Petitioner

vs.

1. The Assistant Commissioner Tax Officer-II,
Office of Commercial Tax Officer,
Room No.25, II Floor, CT Complex,
100 Feet Road,
Puducherry.

2. The Appellate Assistant Commissioner (CT)
Commercial Taxes Department
II Floor, CT Complex,
100 Feet Road,
Puducherry. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the case from the files of the first and second respondent herein, quash the impugned ex-parte order of assessment dated 09.01.2018 in CST No.34970015110/2013-14(CST) for assessment year CST/2013-14 passed by the first respondent and consequent order of the second respondent in No. 186/APRR/2018-19/ACC dated 30.08.2018 and direct the first respondent to issue the revision notice and grant opportunity of personal hearing.

For Petitioner : Mr.B.Sivaraman

For Respondent : Mr.J.Kumaran
Government Advocate (Pondicherry)

O R D E R

The petitioner is aggrieved against the order of assessment dated 09.01.2018 passed in respect of assessment year 2013-14(CST) and the memorandum dated 30.08.2018, issued by the second respondent returning the appeal filed by the petitioner on the reason that the same was filed beyond the period of limitation.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Pondicherry) appearing for the respondents.

3. The petitioner is an assessee on the file of the first respondent. In respect of assessment year 2013-14, two notice of proposals were issued on 22.09.2016 and 03.10.2016 respectively and the Assessing Officer passed the order of assessment on 27.10.2016, after considering the 'C' Forms filed by the petitioner. Thereafter, without issuing any further notice, another assessment order was passed on 09.11.2017 and again on 09.01.2018, in respect of the very same assessment year. It appears that the Assessing Officer sought to revise the assessment already made on 27.10.2016. But, it is evident that the same was done without following the principles of natural justice as no notice was issued on the petitioner before passing the subsequent assessment orders dated 09.11.2017 and 09.01.2018. The petitioner filed an appeal before the second respondent, however, with the delay of 233 days. It is stated that the proprietor of the petitioner firm met with an accident and the same has resulted in filing such appeal with delay. The Appellate Authority returned the appeal memorandum on the ground that the same was filed beyond the period of limitation.

4. The learned counsel vehemently, contended that the very impugned order of assessment dated 09.01.2018 was without issuing notice to the petitioner and thus, the same cannot be sustained solely on the ground of violation of principles of natural justice. Therefore, he contended that the order of assessment has to be set aside.

5. The learned counsel appearing for the respondents, based on instructions, submitted that the Assessing Officer will redo the entire assessment once again after issuing due notice to the petitioner.

6. Considering the above stated facts and circumstances and in view of the admitted position that the impugned order of assessment was passed in violation of principles of natural justice, this Court is fully convinced that the said order of assessment, cannot be sustained. Therefore, the rejection of the appeal memorandum by the second respondent cannot have any force. Accordingly, the Writ Petition is allowed and the impugned orders are set aside. Consequently, the matter is remitted back to the first respondent for considering the matter afresh and pass fresh order of assessment, after issuing due notice and after affording personal hearing to the petitioner. The whole exercise shall be done by the Assessing Officer within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/--
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Commissioner Tax Officer-II,
Office of Commercial Tax Officer,
Room No.25, II Floor, CT Complex,
100 Feet Road,
Puducherry.

2. The Appellate Assistant Commissioner (CT)
Commercial Taxes Department
II Floor, CT Complex,
100 Feet Road,
Puducherry.

+1cc to Mr.B.Sivaraman, Advocate SR.No.67543
+1 CC TO GOVERNMENT PLEADER SR.NO. 67650

W.P.No.24966 of 2018

ASK(16/10/2018)