IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.08.2018

CORAM

THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

W.P.No.17649 of 2018
and
WMP.No.20914 of 2018

M/s. Nathan Tyres
Represented by its Proprietor A.Jesudass,
No.31, First Cross, Velayutham Nagar,
Jayamkondam(Po)
Udayarpalayam. .. Petitioner

Vs.

The Commercial Tax Officer
Jayamkondam Assessment Circle,
Commercial Taxes Buildings,
Jayamkondam. .. Respondent

Writ petition No.17649 of 2018 filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for records in TIN 33433623096/2016-17 dated 01.03.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass a assessment order afresh after considering the representation dated 23.02.2018 and after affording opportunity of being heard.

For Petitioner: Mr.S.Karunakar
For Respondents: M/s.G.Dhana Madhri,
Government Advocate (Tax)

O R D E R

The petitioner is a dealer in tyres and an assessee on the file of the respondent. The present Writ Petition is filed against the order of assessment dated 01.03.2018 passed in respect of the assessment year 2016-17.

2. Heard the learned counsel for the petitioner and learned Government Advocate appearing for the respondent.

3. The petitioner questioned the order of assessment by raising very many grounds touching upon the merits of the assessment, also by raising a ground that the Assessing Officer

has violated the principles of natural justice while passing the order of the assessment.

4. This Court is not inclined to go into the objections raised by the petitioner insofar as the merits of the assessment is concerned. However, as it is seen that the Assessing Officer has passed the assessment order, which includes imposition of the penalty under section 27(3)(a) apart from the tax liabilities, without affording an opportunity of personal hearing to the petitioner, this Court is inclined to interfere with the impugned order without touching upon the merits of the same. Since the learned Government Advocate fairly submitted that the assessee was not afforded with an opportunity of personal hearing before passing the impugned order, this Court is inclined to set aside the impugned order under the following terms and conditions.

The Writ Petition is allowed and the impugned order of the assessment is set aside. Consequently, the petitioner and the respondent are directed to treat the impugned order as notice of proposal. The petitioner shall file their reply within a period of two weeks from the date of receipt of a copy of this order. On receipt of such reply, the respondent shall indicate and intimate the date of personal hearing to the petitioner. On completion of such personal hearing, the respondent shall pass fresh order of assessment on merits and in accordance with law within a period of four weeks from the date of completion of the personal hearing. It is made clear that this Court is not expressing any view on the merits of the claim made by respective parties in respect of the assessment as it is for the respondent to consider and decide. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Audit)

//True Copy//

Sub Assistant Registrar

vsi/ssr

To

The Commercial Tax Officer
Jayamkondam Assessment Circle,
Commercial Taxes Buildings,
Jayamkondam.

+ 1 cc to Mr.S. Karunakaran, Advocate Sr.57946
+ 1 cc to Special Government Pleader Sr.57705

W.P.No.17649 of 2018

(AR-Audit)
EU(06/09/2018)