In the High Court of Judicature at Madras

Dated : 24.7.2018

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition No.18811 of 2018
&
WMP.No.22174 of 2018

R.Dhachinamoorthi ...Petitioner

Vs

1.The Assistant Commissioner (State Tax), Chithode Circle, Commercial Tax Office, Brough Road, Erode-638001. Erode District.

2.The Deputy Commercial Tax Officer, Chithode Assessment Circle, Erode-638001. Erode District. ...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned orders made in Na.Ka.No.2458/2016/A3 dated 22.5.2018 passed by the 1st respondent in confirming the assessment order in TIN No.33443063740/2011-12 dated 20.7.2016 passed by the 2nd respondent, quash the same and consequently direct the respondents to give the petitioner an opportunity of hearing afresh.

For Petitioner : Mr.N.Manokaran

For Respondents : Mrs.G.Dhana Madhri, GA

ORDER

Mrs.G.Dhana Madhri, learned Government Advocate accepts notice for the respondents. Heard both. By consent, the writ petition itself is taken up for final disposal.

2. The petitioner is aggrieved by a notice of demand dated

20.7.2016 issued by the second respondent and the consequential proceedings dated 22.5.2018 issued by the first respondent.

3. The turnover for the assessment year 2011-12 was sought to be revised based on the details taken from the official website of the Commercial Taxes Department alleging that the petitioner purchased auto parts during the said assessment year, but the same were not reflected in the returns. Pursuant to the notice issued by the second respondent, the petitioner appeared for a personal hearing and produced certain purchase bills. Consequently, the proposal in the notice was slightly modified and an order was passed on 20.7.2016. It appears that after the said order was passed, the petitioner took legal advice and submitted a detailed representation dated 12.5.2018. The impugned order dated 22.5.2018 is a reply to the petitioner's representation dated 12.5.2018 coupled with the order confirming the earlier demand.

4. This Court finds that along with the impugned order dated 22.5.2018, the details of various transactions alleged to have been done by the petitioner and not reflected in the returns have been furnished. Though, in the impugned order 20.7.2016, there is a reference to the details culled out from the Departmental website, it is not clear as to whether the entire details were furnished to the petitioner while issuing the show cause notice. In any event, the petitioner should be afforded a reasonable and effective opportunity to put forth their case, especially when they stated that they closed down their business. Thus, this Court is of the view that the assessment should be redone in accordance with law after affording an opportunity of personal hearing.

5. In the light of the above, the writ petition is disposed of by directing the petitioner to treat the impugned proceedings dated 20.7.2016 and 22.5.2018 as show cause notices and submit their objections to the second respondent within a period of 15 days from the date of receipt of a copy of this order. On receipt of the objections, the second respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessment in accordance with law. Till then, no coercive action shall be initiated against the petitioner. No costs. Consequently, the connected WMP is closed.

Sd/-
Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

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To

1.The Assistant Commissioner (State Tax),
Chithode Circle, Commercial Tax Office,
Brough Road, Erode-638001. Erode District.

2.The Deputy Commercial Tax Officer,
Chithode Assessment Circle,
Erode- 638001.
Erode District.

+1cc to Mr.N.Manokaran, Advocate SR.No.49654
+1cc to Special Government Pleader SR.No.50066

WP.No.18811 of 2018&
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SVN(CO)
GN(07/08/2018)