BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2018

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD).No.1464 of 2018
and
W.M.P.(MD).Nos.1529 & 1530 of 2018

M/s.Kanishga Maligai,
Represented by its Proprietor M.Kesavan,
No.2, Trichy Road, Manapparai-621306. ...Petitioner

Vs.

The Commercial Tax Officer,
Manapparai Assessment Circle,
Commercial Tax Building, Manapparai. ...Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in TIN 33483742136/2014-2015 dated 31.07.2017 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondent to pass assessment order afresh after affording an opportunity of cross examination of the sellers to the petitioner by considering the reply dated 08.06.2016 filed by the petitioner within such time as may be fixed by this Court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.S.Srimathy
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.By consent of both parties, the main Writ Petition itself is taken up for final disposal.

3.The petitioner is an assessee registered with the respondent. He suffered an order under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. Aggrieved by the same, he preferred an appeal before the first appellate authority. The first appellate authority by order dated 09.03.2016 allowed the appeal and remanded the matter to the file of the original authority.

4.After such remand, the matter was taken up afresh. The petitioner has placed convincing materials before this Court that he cooperated in the enquiry after the remand order was passed. The specific allegation made by the petitioner is that though he was present, the other end dealers were not present. The submission of the petitioner was also duly recorded. But strangely in the final order dated 31.07.2017 the respondent has observed that on the date of cross examination the other end dealers appeared and they also furnished bill wise details of the sale made by him. This finding is strongly contested by the petitioner.

5.This Court is of the view that the contention of the petitioner that he was present for cross examination and that the other end dealers were absent carries more credibility. The finding with regard to the presence of the other end dealers is obviously not correct. In this view of the matter, the order impugned in the Writ Petition is quashed. The matter is remitted to the file of the respondent. The respondent shall ensure that the other end dealers are present for cross examination. Due acknowledgement will be obtained from both the petitioner as well as the other end dealers. The respondent shall resume the enquiry from the stage immediately prior to passing of the final orders.

6.With this direction, the Writ Petition stands allowed accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True copy/

Sub Assistant Registrar

To
The Commercial Tax Officer,
Manapparai Assessment Circle,
Commercial Tax Building, Manapparai.

+1CC TO M/S.S.KARUNAKAR, ADVOCATE, SR NO.48209
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.48607

ORDER MADE IN
W.P.(MD).No.1464 of 2018
13.02.2018

tsg
MS/SV-MMS/SAR-1/02.04.2018/2P.4C