BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.17360 of 2018
and W.M.P.(MD) No.15265 of 2018

Bharath Agency
Represented by its Proprietor
A.Asokan .. Petitioner

Vs.

The Commercial Tax Officer (FAC),
Nagercoil (Rural),
Mead Street, Nagercoil,
Kanyakumari District. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN No.33176126227/ 2013-2014, dated 26.06.2014 and quash the same and consequently direct the respondent to consider the representation of the petitioner dated 27.03.2018 and grant to the petitioner the web report and other details relied on for issuing the pre-assessment notice dated 23.05.2014, and after granting to the petitioner, an opportunity to submit reply to the notice and a personal hearing.

For Petitioner : Mr.M.Azeem
For Respondent : Mr.B.Bhagavathi
Government Advocate

O R D E R

The petitioner is a registered dealer under Tamilnadu Value Added Tax, 2006. He is selling Fruit Cane Drinks. For the assesssment year 2013-2014 he submitted his returns. His returns would be deemed to have assessed after lapse of six months i.e on 31.10.2014. But before expiry of the deemed date of assessment, the respondent issued revision notice dated 23.05.2014. The petitioner submitted his objections. Thereafter, the respondent has passed final orders confirming the proposals in his proceedings dated 26.06.2014. Since the petitioner did not pay the tax, attachment of his bank account was ordered. Challenging the order of assessment, the petitioner is before this Court.

2. Heard both sides.

3. The learned counsel for the petitioner would contend that the revision notice can be issued only after the assessment order is passed. In this case, the deemed date of assessment is 31.10.2014 whereas the respondent issued revision notice as early as on 23.05.2014 which is premature. Even the impugned assessment order dated 26.06.2014 was passed before the deemed date of assessment i.e 31.10.2014. Therefore, he would contend that both revision notice as well as the impugned assessment order are without jurisdiction. Further the assessment order was based on web report. But the details secured from the website were not furnished to him. As per Section 22(4) of the TNVAT Act, it is mandatory to afford an opportunity of personal hearing. Whereas in the instant case, personal hearing was not given. Therefore, I am of the considered opinion that the assessment order passed by the respondent is pre-mature, without jurisdiction and also violation of principles of natural justice.

4. However, notice as well as the assessment order passed on 26.06.2014 were not challenged by the petitioner till he received a communication of the respondent in R.O.C.NO.A3/1251/2015 dated 09.03.2018 wherein bank account of the petitioner was attached in Form-U. There is a delay of four years in filing the writ petition. The petitioner has also failed to avail an appeal remedy.

5. However, directing the petitioner to file an appeal would not serve the purpose as revision notice was issued on the basis of web report. Unless the materials are given to the petitioner and he is permitted to file his objections, he will not be in a position to raise any grounds. In such circumstances, the petitioner is directed to deposit 40% of the total amount before the authority.

6. In view of the finding that revision as well as assessment order are without jurisdiction, this Court is inclined to remand the matter back to the respondent. The petitioner is directed to deposit 40% of the total amount within a period of four weeks from the date of receipt of a copy of this order. On such deposit, the respondent is directed to furnish all the web details and call for objections. After affording an opportunity of personal hearing, assessment order shall be passed in accordance with law within a period of four weeks from the date of receipt of the objections.

7. In the result, the writ petition is allowed. No costs. Consequently, W.M.P.(MD) No.15265 of 2018 is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Commercial Tax Officer (FAC),
Nagercoil (Rural),
Mead Street, Nagercoil,
Kanyakumari District.

+ 1 CC TO Mr.M.AZEEM, ADVOCATE IN SR No. 76975
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 77280

CM
TE/RP/SAR-2 : 27/08/2018 : 3P/4C

W.P(MD)No.17360 of 2018
and W.M.P.(MD) No.15265 of 2018
03.08.2018