BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.01.2018

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.18627 of 2014
and
MP(MD)No.1 of 2014

M/s.Saga Steels Private Limited,
Rep. by its Director Shashi Kumar Nair,
3/204-12, Murugamalai Nagar,
Periyakulam, Theni District. ... Petitioner

Vs.

The Commercial Tax Officer,
Periyakulam, Theni. ... Respondent

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records in TIN No.33795121936/2008-09 dated 09.10.2014 on the file of the respondent and quash the same and direct the respondent to pass orders after affording adequate opportunity to the petitioner.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.Rajakarthikeyan,
Addl.Govt.Pleader

O R D E R

The petitioner is carrying on business in iron and steel rods. He has been registered with the respondent's office as an assessee. The writ petitioner reported nil total and taxable turn over for the assessment year 2008-09. Subsequently, the respondent initiated action under Section 22(4) of the TNVAT Act 2006. Notice for re-opening the assessment was issued on 01.08.2014. The petitioner was given 15 days time to lodge his objections. The petitioner submitted a letter dated 04.09.2014 seeking a month time for submission of the relevant documents. Even though such a request letter was lodged with the respondent, the respondent without making any reference to the same proceeded to pass the impugned order dated 09.10.2014 determining the tax liability of the writ petitioner at Rs.2,45,782/- for the assessment year 2008-09.

2.The learned counsel appearing for the writ petitioner pointed out that reasonable opportunity of personal hearing was not afforded to the writ petitioner. He placed reliance on an unreported decision of this Court made in *WP(MD)Nos.2194 to 2199 of 2013 dated 26.06.2013.* This Court held that when a request for extension of time is made, the same must be dealt with. In this case, such a course of action was not adopted. The authority has proceeded in the matter as if there was no response to the show cause notice issued by him. This is clearly incorrect.

3.Therefore, I have no hesitation to set aside the order dated 09.10.2014 passed by the respondent. The matter is remitted to the file of the respondent for fresh determination and in accordance with law. The respondent is directed to issue fresh notice to the writ petitioner indicating the date of hearing and direct the assessee to produce the relevant documents. Thereafter, the respondent is directed to consider the issue on merits and pass appropriate orders in accordance with law.

4.The learned counsel appearing for the writ petitioner on instructions offered to remit the 15% of the disputed tax amount to the respondent. This undertaking is recorded. The said amount shall be remitted to the respondent within a period of four weeks from the date of receipt of a copy of this order.

5.This writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Periyakulam, Theni.

+One cc to Mr.S.Karunakar, Advocate, SR.No.40145

+2 ccs to The Special Government Pleader, SR.Nos.40122 and 40256

skm
RL/4C/2P/JC/SAR1/25/1/2018

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