BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 18.07.2018
CORAM
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD)No.14243 of 2018
and
W.M.P.(MD)No.12904 of 2018

B.Karunakaran,
Works Contractor,
No.73/2777, Gajalakshmi Nagar,
EB Colony,
Thanjavur - 613 006. ... Petitioner

/Vs./

The Commercial Tax Officer,
Thanjavur - I, Assessment Circle,
CT Buildings, Sachidananda Mooppanar Road,
Thanjavur. ... Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33053803822/2011-2012 dated 23.04.2018 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

The petitioner is a Civil Contractor carrying on small contract works. He filed monthly returns for the assessment year 2011-2012 and it was deemed to be completed on 31.10.2012 as per Section 22 of the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as "the TNVAT Act"]. Subsequently, pursuant to the monthly returns filed by the petitioner, a pre-revision notice was issued by the respondent on 26.02.2018 giving fifteen days time for filing his objections. However, the petitioner did not file his objections and a reminder notice was issued by the respondent on 06.04.2018 offering the petitioner time to file objections as well as an opportunity of personal hearing. The petitioner did not file any objection and therefore, the assessing authority proceeded under Rule 8(5)(d) of the Tamil Nadu Value Added Tax Rules, 2007, [hereinafter referred to as "the TNVAT Rules"] and imposed penalty under Section 27(3) of the TNVAT Act. Challenging the order passed by the Assessing Authority, dated 23.04.2018, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner would submit that the petitioner was maintaining accounts and he handed over the same to the auditor for the purpose of filing his objections. Unfortunately, he fell ill and suffered by viral Hepatitis. So he could not appear before the respondent and file his objections. Further, he would rely on the judgment of the Hon'ble Supreme Court reported in **88 STC 207**, wherein the Hon'ble Apex Court has held that when those who does not maintain accounts, does not deserve credence, he can invoke Rules under Section 8(5)(d) of the Act, whereas, in this case, the petitioner has all the accounts and he could not submit the same due to his illness. He was precluded from submitting his objection for the same reason. Therefore, he seeks one more opportunity to submit his accounts for proper assessment.

3. Controverting the contention, the learned Additional Government Pleader would vehemently contend that the pre-revision notice dated 26.02.2018 as well as the reminder dated 06.04.2018 are not disputed by the petitioner. Having received the notice and having failed to avail an opportunity of filing objections and personal hearing, the petitioner is not entitled to contend that the order is erroneous. He would also submit that there is an appeal remedy against this order. Hence, this writ petition is liable to be dismissed.

4. Heard both sides.

5. Admittedly, the petitioner has given a statement that he is maintaining proper accounts and he has deducted the labour charges for the execution and amounts paid to other services, etc., and filed a proper return. Unfortunately, he fell ill and could appear before the respondent.

6. Considering the short period between the date of issuance of pre-revision notice dated 26.02.2018 and reminder notice dated 06.04.2018 and the impugned order dated 23.04.2018, this Court is of the opinion that one more opportunity can be given to the petitioner. Accordingly, the order impugned in this writ petition dated 23.04.2018 is set aside with a view to provide one more opportunity to the petitioner. The matter is remitted back to the respondent. The petitioner is directed to submit all his accounts before the respondent within a period of fifteen days from the date of receipt of a copy of this order. On such receipt, the respondent shall consider the objections filed by the petitioner and pass orders within a period of one month thereafter.

7. Insofar as the non exhaustion of alternative remedy is concerned, even assuming that the petitioner is directed to file an appeal, the appellate authority will not be in a position to entertain the same, for, it requires production and verification of accounts. Ultimately, he has to remand the matter back to the

Original Authority for fresh consideration. Instead of forcing the petitioner to undergo an empty formality, this Court directly remits the matter back to the Original Authority.

8. With the above directions, this Writ Petition is disposed of. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (Crl. Side)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Commercial Tax Officer,
Thanjavur - I, Assessment Circle,
CT Buildings, Sachidananda Mooppanar Road,
Thanjavur.

+1cc to Mr.K.Soundararajan, Advocate SR.No.74057
+1cc to SPECIAL GOVERNMENT PLEADER, Advocate SR.No.73821
Sm
MK/RP/SAR 2/23.08.2018/3P/4C

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