BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.11.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.23518, 23533, 23534 and 23535 of 2015
and
M.P.(MD)Nos.1,1,1 and 1 of 2015

N.Kannan ... Petitioner in all Writ Petitions

Vs.

1. The Commissioner of Commercial Tax,
Office of the Chief Commissioner / Special Commissioner,
Department of Commercial Tax,
Ezhilagam, Chepauk,
Chennai – 600 005.

2. The Deputy Commissioner (Commercial Tax),
Madurai North,
Office of Commercial Tax,
Commercial Tax Officer Complex,
Dr.Muthusamy Road, K.K.Nagar,
Madurai- 625 020.

3. The Deputy Commercial Tax Officer,
Nilakkottai Assessment Circle,
Nilakkottai,
Dindigul District.

4. K.Dheena Dayalan ... Respondents in all Writ Petitions

PRAYER W.P.(MD)No.23518 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings in TIN No.33705301387/2014-2015 dated 30.11.2015 passed by the third respondent and quash the same.

PRAYER W.P.(MD)No.23533 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings in TIN No.33705301387/2011-2012 dated 30.11.2015 passed by the third respondent and quash the same.

PRAYER W.P.(MD)No.23534 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings in TIN No.33705301387/2013-2014 dated 30.11.2015 passed by the third respondent and quash the same.

PRAYER W.P.(MD)No.23535 of 2015: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the impugned proceedings in TIN No.33705301387/2012-2013 dated 30.11.2015 passed by the third respondent and quash the same.

For Petitioner : Mr.D.Shanmugaraja Sethupathi (in all Wps)
For R1 to R3 : Mr.Aayiram K.Selvakumar
Additional Government Pleader
(in all Writ Petitions)

COMMON ORDER

The petitioner in all these writ petitions is one and the same. The assessment years alone are different. The petitioner was issued with notice dated 09.09.2015, proposing levy of tax and penalty. The petitioner submitted his reply. This was followed by one more notice. After receiving the same, the petitioner submitted a request letter dated 11.11.2015 seeking adjournment. The petitioner wanted 30 more days time. This adjournment letter of the assessee was received on 12.11.2015. This is admitted in the impugned orders themselves. Thereafter, the assessee had submitted his explanation on 01.12.2015. That was also duly acknowledged by the respondent. But according to the respondent, the impugned orders came to be passed even earlier, that is on 30.11.2015. The said orders are challenged in these writ petitions.

2.Heard the learned counsel on either side.

3.The specific contention of the learned counsel for the petitioner is that by letter dated 11.11.2015, the petitioner sought time for 30 more days and the same was also received. The respondent was obliged to pass an order on the said request one way or the other. In the present case, the impugned order reads that time was granted till 26.11.2015 and that till that date no further explanation was received from the writ petitioner. The specific stand of the petitioner is that after receiving his adjournment letter dated 11.11.2015, no further communication was received from the respondent except the impugned order.

4.This Court had a look at the text of the impugned order. In the reference column, the adjournment letter of the assessee is referred to as the sixth item. If really the said request had been accepted to a limited extent and time was granted till 26.11.2015, definitely a communication would have been issued from the respondent side. But there is no such communication produced before this Court. There is no reference to such communication in the impugned order.

5.This Court is bound to come to the conclusion that without disposing of the assessee's request letter dated 11.11.2015, the impugned order came to be straight away passed. The statement in the impugned order that time was granted up to 26.11.2015 has not been established. No material has been produced before this Court in support of the said claim.

6.Therefore, this Court comes to the conclusion that the impugned order suffers from violation of the principles of natural justice. The order impugned in this writ petition is set aside. The matter is remitted to the file of the third respondent. The third respondent shall afford an opportunity of personal hearing to the petitioner and thereafter pass orders afresh in accordance with law.

7.Accordingly, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

1. The Commissioner of Commercial Tax,
   Office of the Chief Commissioner / Special Commissioner,
   Department of Commercial Tax,
   Ezhilagam, Chepauk, Chennai - 600 005.

2. The Deputy Commissioner (Commercial Tax),
   Madurai North,
   Office of Commercial Tax,
   Commercial Tax Officer Complex,
   Dr.Muthusamy Road, K.K.Nagar,
   Madurai- 625 020.

3. The Deputy Commercial Tax Officer,
   Nilakkottai Assessment Circle,
   Nilakkottai,
   Dindigul District.

+ 1 CC TO Mr.D.SHANMUGA RAJA SETHUPATHI, ADVOCATE IN SR No. 95163
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 95401

PNN
TE/SKN/SAR-4 : 06/12/2018 : 3P/6C