BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.16742 of 2018
and
W.M.P.(MD)No.14794 of 2018

Tvl.Lalitha Trading,
rep. by its Proprietor,
J.Babu Singh, aged about 30 years,
S/o.Jaber Singh,
No.2, AKGN Complex,
East Hanumantharayan Koil Street,
Madurai - 625 001. .. Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Deputy Commercial Tax Officer,
West Tower Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the 2nd respondent in Assessment No.33334803059/15-16, dated 07.03.2017 and quash the same and direct the 2nd respondent to redo the assessment after giving adequate opportunity.

For Petitioner : Mr.Rajakarthikeyan

For Respondents : Mr.B.Bhagavathy,
Government Advocate

ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. He filed a return for the assessment year 2015-2016. Pursuant to the inspection made in the petitioner's premises on 19.08.2015, revision notice was issued to the petitioner calling for objections on 30.01.2017. The 2nd respondent has not provided copies of the web report and hence, the petitioner could not file his objection. In such circumstances, without affording an opportunity of personal hearing, the 2nd respondent has passed the impugned order dated 07.03.2017. On making such averments, the petitioner is before this Court challenging the impugned order, dated 07.03.2017.

2. The learned counsel appearing for the petitioner would contend that as the 2nd respondent has not provided copies of web report and other connected documents, like annexure of the other end dealer and the copies of the alleged invoices, etc., the petitioner could not file his objections. It is also contended that before passing the impugned order, an opportunity of personal hearing was not provided to the petitioner and thus, the impugned, order, 07.03.2017, has been passed in violation of the principles of natural justice.

3. The learned Government Advocate appearing for the respondents would submit that the impugned order has been passed on 07.03.2017. The petitioner has approached this Court after a period of 1-1/2 years and the statutory appeal itself is barred by limitation.

4. Heard the learned counsel for the parties.

5. When there is an appeal remedy available to the petitioner, he shall approach the appellate authority and after exhausting the appeal remedy, he may approach this Court. Further, it is stated that till date the department has not collected the amount. He cannot raise a plea of violation of principles of natural justice at this distance of time. Considering the facts and circumstances of the case and also revenue, this Court is of the opinion that the petitioner can be given one more opportunity to adjudicate the issue on merits on payment of a portion of the tax due and that will benefit the revenue also.

6. In view of the above, the petitioner is permitted to file an appeal against the impugned order, dated 07.03.2017, before the appellate authority on condition that he deposits 35% of the tax due demanded in the order of assessment dated 07.03.2017, within a period of two weeks from the date of receipt of a copy of this order. On such deposit, the appellate authority is directed to take the appeal on file and dispose of the same on merits and in

accordance with law within a period of two months thereafter.

7. This Writ Petition stands disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Commissioner of Commercial Taxes,
   O/o.The Principal and Special Commissioner
   of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai – 600 005.

2. The Deputy Commercial Tax Officer,
   West Tower Street Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai – 625 020.

Copy To:-

The Section Officer, E.R.Section,
Madurai Bench of Madras High Court,
Madurai.
(To return the original impugned order after getting photostat copy of the same)

+ 1 CC TO Mr.B.ROOBAN, ADVOCATE IN SR No. 75672
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 75633

GCG
TE/KAK/SAR-1 : 27/08/2018 : 3P/6C

Order made in
W.P(MD)No.16742 of 2018
Dated: 30.07.2018