BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.19553 of 2018
and
W.M.P.(MD)No.17350 of 2018

Alagu Ambigai Explosives,
Rep. by its proprietor,
Arumugasamy ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes & Registration Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk,
Chennai - 600 005.

3.The State Tax Officer (S.T.),
Office of the Assistant Commissioner,
Tuticorin. ... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus to call for the records relating to the order passed by the 3rd respondent in TIN 33985684965/2015-2016/A3 dated 21.08.2018, quash the same and to direct the 3rd respondent to afford an opportunity of being heard and pass fresh orders for the assesment year 2015 - 2016.

For Petitioner : Mr.M.MD.Ibrahim Ali
For Respondents : Mr.A.Thiyagarajan,
Government Advocate

ORDER

By consent, this writ petition was taken up for final disposal at the stage of admission itself.

2. The present writ petition has been filed challenging the impugned demand notice, dated 21.08.2018, passed by the third respondent, on two grounds, viz., the assessment order was not served on the petitioner as per the provisions laid under Rule 19 of the Tamil Nadu Value Added Tax Act; and secondly, opportunity of personal hearing not granted.

3. Mr.A.Thiyagarajan, learned Government Advocate, who takes notice for the respondents, would vehemently contend that before passing the impugned demand notice, the petitioner was issued with a show cause notice and therefore, the contention that no opportunity was given has to be turned down.

4. Perusal of the records would show that before passing the impugned demand notice, dated 21.08.2018, a show cause notice was issued on 02.01.2018, for which, the petitioner has also made his reply on 20.02.2018. In the said show cause notice, it is stated that there is also an opportunity of personal hearing and the petitioner could also avail the same, however, no specific date was given. For better understanding, that portion from the show cause notice is extracted thus:

> "*Personal Hearing:*
>
> *It is also given an opportunity of personal hearing. You may appear in person if desired on any working day within 15 days from the date of receipt of this notice before under signed authority.*"

5. In the opinion of this Court, this is nothing but a strategy adopted by the authorities to plead that opportunity of personal hearing, though extended to the parties, was not utilized. It is for the authorities to fix a specific date for hearing and not for the parties to choose and pick. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the Justice Ramanujam Committee, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing.

6. An assessment should be completed in a proper manner. Therefore, in the opinion of this Court, the matter should be remanded for fresh consideration. Accordingly, the impugned demand notice, dated 21.08.2018, is set aside and the matter is remitted back to the third respondent for fresh consideration. The third respondent is directed to fix a specific date for hearing, within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioner, in advance. On the said date, the petitioner is directed to appear before the third respondent along with supporting documents. Thereafter, the third respondent shall

pass appropriate orders, purely on merits, within a further period of one month thereafter.

7. With the above directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS IV)

gk

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes & Registration Department,
Fort St. George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk, Chennai - 600 005.

3.The State Tax Officer (S.T.),
Office of the Assistant Commissioner,
Tuticorin.

1CC TO THE SPL GOVT PLEADER SR 84062

1CC TO MR.MOHAMMED IBRAHIM ALI ADVOCATE IN SR.NO.83171.

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