IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.07.2019

CORAM

THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.34268 of 2012
and
M.P.Nos.1 & 2 of 2012

M/s.Sri Rajeshwari Traders,
Rep.by its Proprietor - M.Loganathan,
No.21, Nadupalayam,
Chithode, Erode District. ...Petitioner

Vs.

1.The Special Committee,
Office of the Commercial Tax Department,
Ezhilagam,
Chepauk,
Chennai.

2.The Deputy Commercial Tax Officer,
Chithode Circle, Erode. ...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the impugned proceedings of the 1st respondent in SCP.No. 17/2012 Ref.No.M1/39140/2011 dated 30.11.2012, quash the same as illegal and violative of the provisions of the Act as well as the principles of natural justice.

For Petitioner : S.Rajasekar

For Respondents : Mrs.Dhanamadhri
Government Advocate

O R D E R

One of the primary objection raised before the Authorities exercising Jurisdiction under Section 16 B of the TNGST Act, is that the Assessment Order was passed in violation of the principles of natural justice.

2. According to the petitioner, the notice of the D-3 proposal and the Assessment Order was not issued, since the premises of the dealer was closed down in the address in which the respondents had sent the notice, long back. Though the respondents were aware of the writ petitioner's residential address, to which the notice of Distraint Proceedings were sent, they had not chosen to send Assessment Order to such place.

3. In the impugned order, the first respondent herein had observed that, since the notice has been sent to the last known address, there is no violation of the principles of natural justice. However, since the notice of Destraint Proceedings appears to be sent to the petitioner's residence, it can only be construed that the respondents are aware of the residential address and could have sent a notice of the assessment proceedings to the residence also. In this background, it would be appropriate that the petitioner be given one more opportunity to putforth his objections.

4. In this context, the petitioner relied upon a decision of this Court in the case of Tvl.Shree Knit Wear vs. The Commercial Tax Officer, Tirupur, wherein it has been observed as follows:

> "7.Clause (b) and (c) of Section 52, clearly mandates the assessing authority to send the notice/order to the residence of the assessee when the address is known. In the instant case, even the assessment order has been served only by affixture in the registered office of the assessee. Affixture can only be done, only if the prescribed modes as per clause (a) to (c) of the above mentioned Rule of TNGST Act is not feasible of compliance. Affixture can be done by affixing the notice or order in some conspicuous place at his last known place of business or residence as contemplated under clause (d) of Section 51 of the Act. It is apparent that affixture has been done without following the procedure contemplated under Clause (a) to (c) of the Rules and such procedure is not permissible in law. The petitioner has not been given adequate opportunity to submit his objections and therefore the consequential order of assessment is violative of principle of natural justice. Therefore, the impugned assessment order dated 31.03.2003 is quashed and the writ petition is allowed."

5. In the light of the above observations, the order dated 30.11.2012, on the file of the Special Committee, Office of the Commercial Tax Department, is set aside and the matter is remanded back to the second respondent herein, who shall serve

the pre-assessment notice at the residence of the Proprietor of the dealer. On receipt of such notice, the petitioner is directed to submit their objections within a period of 15 days therefrom. Consequently, the respondents shall pass appropriate orders on merits and in accordance with law, within a period of three weeks therefrom.

6. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Pns
To

1.The Special Committee,
Office of the Commercial Tax Department,
Ezhilagam,
Chepauk,
Chennai.

2.The Deputy Commercial Tax Officer,
Chithode Circle,
Erode.

+1cc to M/s.R.Hemalatha, Advocate Sr.56069
+1cc to the Special Government Pleader Sr.56130

W.P.No.34268 of 2012

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srg 26/08/2019