WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.4669 of 2019
and
W.M.P.(MD) No.3724 of 2019

Neethi Match Factory,
Rep., by its Prop.Mr.Martin Charles,
No.4/92, Koolaiyathevanpatti,
Sankaran Koil Taluk 628 552
Tirunelveli ... Petitioner

-vs-

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

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

3. The Commercial Tax Officer (Main)/
The State Officer (Main),
Kovilpatti - II, Kovilpatti,
Tuticorin District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned Notice Cum Demand order passed by the 3rd respondent dated 22.01.2019 in TIN/33765942039/ 2014-15 2015-16/A3/535/2016 dated 22.01.2019 and quash the same and to direct the 3rd respondent tot issue notice and after affording an opportunity of personal hearing and pass orders in accordance with law.

For Petitioner : Mr.M.MD.Ibrahim Ali

For Respondents : Mr.D.Muruganantham,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the impugned notice cum demand order passed by the third respondent dated 22.01.2019 in TIN No.33765942039/ 2014-15, 2015-16/A3/ 535/ 2016.

WEB COPY

2. It is the case of the petitioner that pursuant to the order dated 20.10.2016 passed by the Division Bench of this Court in W.A.(MD)Nos.1357 & 1358 of 2016, the petitioner has paid the entire tax. The learned counsel for the petitioner drew the attention of this Court to the operative portion of the aforesaid order passed by the Division Bench dated 20.10.2016 and the relevant portion of the order reads as under:

> "7. In the result, the appellant, in terms of the assessment orders, shall remit the tax to the third respondent within a period of two weeks from the date of receipt of copy of this judgment and in so far as levy of penalty is concerned, the third respondent is directed to give fair opportunity to the petitioner to putforth his submission and upon receipt of the same, consider the objections in accordance with law and pass orders within further period of four weeks thereafter. Communicate the decision to the appellant. The Writ Appeals are disposed of accordingly, No costs,. Consequently, connected C.M.P (MD)Nos.9894 and 9895 of 2016 are closed."

3. As seen from the aforesaid Division Bench order, the third respondent was directed to give fair opportunity to the petitioner before adjudicating the levy of penalty on the petitioner for the assessment year 2014-15 and 2015-16. Instead of giving an opportunity to the petitioner to raise all objections as regards penalty, the third respondent has directly raised the impugned demand dated 22.01.2019 calling upon the petitioner to pay the total penalty of Rs.1,49,911/- immediately and they have also cautioned that failure to pay will result in attaching the bank account, restraint proceedings under the revenue recovery act, filing of a criminal complaint and civil arrest under the Revenue Recovery Act.

4. In the demand notice, there is no mention of any prior show cause notice or any notice of hearing given to the petitioner by the third respondent before raising the impugned demand. As seen from the impugned notice of demand, the third respondent has not followed the directions given by this Court to afford fair opportunity to the petitioner to putforth his objections before the adjudicating authority.

5. It is evidently clear that the third respondent has not followed the directions given by the Division Bench of this Court dated 22.10.2016 passed in W.A.(MD) Nos.1357 & 1358 of 2016. In the

https://hcservices.ecourts.gov.in/hcservices/

light of the above observations, the impugned notice of demand dated 22.01.2019 has to be quashed and the matter remanded back to the third respondent for fresh consideration.

6. In the result, the impugned notice cum demand order dated 22.01.2017 is quashed and the matter is remitted back to the file of the third respondent for fresh consideration and the third respondent is directed to give sufficient opportunity to the petitioner to raise all objections available to him under law and also to afford him the right of personal hearing before adjudicating the matter. The third respondent shall pass final orders within a period of eight(08) weeks from the date of receipt of a copy of this order.

7. With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, W.M.P.(MD) No.3724 of 2019 is closed.

Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

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

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

3. The Commercial Tax Officer (Main)/
The State Officer (Main),
Kovilpatti - II, Kovilpatti,
Tuticorin District.

+1CC TO Mr.Mohamed Ibrahim Ali, Advocate, Sr No.51442
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.51689

Order made in
W.P.(MD).No.4669 of 2019
01.03.2019

sts
KK/04.04.2019/3P.6C

https://hcservices.ecourts.gov.in/hcservices/