BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.09.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.14164 of 2019
and
W.M.P(MD).No.10638 of 2019

Tvl.Vijay Shoe Company
Represented by its partner
Savita Devi ... Petitioner

-Vs-

1.The Commissioner of Commercial Taxes
Office of the Principal and Special Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai 600 005

2.The Assistant Commissioner (ST)
Vengalakadai Street Circle
Commercial Taxes Complex
Dr.Thangaraj Salai
Madurai 625 020 ....Respondents

Prayer: This Writ Petition has been filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the 2nd respondent in TIN:33914860455/2008-09, dated 05.04.2019 and TIN:33914860455/2008-09 dated 27.06.2018 and quash the same and consequently direct the 2nd respondent to re-do the assessment afresh by giving adequate opportunity to the petitioner.

(Prayer amended vide Court order dated 23.07.2019 in W.M.P(MD). No.13015 of 2019)

For Petitioner : Mr.B.Rooban for Mr.Raja.Karthikeyan

For Respondents : Mr. Gunaseelan Muthiah Additional Government Pleader

ORDER

The Writ petition has been filed to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN:33914860455/2008-09, dated 05.04.2019 and TIN:33914860455/2008-09 dated 27.06.2018 and quash the same and consequently direct the 2nd respondent to re-do the assessment afresh by giving adequate opportunity to the petitioner.

2.The Writ Petitioner Company had received the assessment order, dated 27.06.2018 passed by the second respondent herein. Thereafter, the petitioner filed a petition under Section 84 of the TNVAT Act, 2006 for producing all the accounts before the Assessing Authority. Since the Assessing Authority refused to consider the petitioner's application, dated 18.07.2018, the petitioner has filed the petition in W.P(MD).No.23731 of 2018 before this Court seeking for a direction, directing the second respondent to rectify the revised order for the assessment year 2008-09. This Court after considering the submissions made on either side, by its order dated 29.11.2018, has passed the following order;

> *"3.This Court therefore, directs the second respondent to consider the petitioner's application dated 18.07.2018 filed under Section 84 of the TNVAT Act, 2006 and pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order...."*

3. Thereafter, the second respondent without complying the order passed by this Court in the above said writ petition, he has passed the present impugned order in TIN:33914860455/2008-09, dated 05.04.2019, in which, paragraph-11 reads as follows:

> *"11.The issue involved here is for consideration of their petition under Section 84 of the Act. Hence, the above records now produced do not requires any consideration"*

4.Even though, a positive direction was given by this Court to the second respondent to consider the petitioner's application on merits, the same was rejected on technicalities stating that in the absence of one of the partners, the other partners could have produced the accounts. The reasons stated in the order are purely technical for avoiding the orders being passed on merits. Such a conduct, cannot be encouraged.

5.In view of the above, this Court is inclined to set aside the impugned orders passed by the second respondent in in TIN:33914860455/2008-09, dated 05.04.2019 and TIN:33914860455/2008-09 dated 27.06.2018. Accordingly, it is set aside and the matter is remanded back to the second respondent for consideration on merits. Further, the second respondent is directed to dispose of the same, within a period of four weeks from the date of receipt of a copy of this order.

6.Accordingly, this Writ Petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes
Office of the Principal and Special Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai 600 005

2.The Assistant Commissioner (ST)
Vengalakadai Street Circle
Commercial Taxes Complex
Dr.Thangaraj Salai
Madurai 625 020.

+1 CC to M/s.B.ROOBAN, Advocate SR-87090.
+1 CC to SPL GP SR-87223.

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