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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.4355 of 2017
and
W.M.P.(MD)No.3501 of 2017

H.Arun Prabahar
Proprietor
J.A.M.Construction ... Petitioner

Vs.

1.The Appellate Deputy Commissioner of
Commercial Taxes,
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
Tirunelveli - 627 002.

2.The Additional Deputy Commissioner of
Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 1st respondent in Na.Ka.A1/28/17, dated 10.01.2017 and quash the same and consequently direct the 1st respondent to admit the appeal filed by the petitioner against the order of the 2nd respondent in TIN 33986185388/2014-15, dated 27.10.2015.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the order, dated 10.01.2017 passed by the first respondent and consequently direct the first respondent to admit the appeal filed by the petitioner against the assessment order, dated 27.10.2015, passed by the second respondent in TIN 33986185388/2014-15.

2.It is the case of the petitioner that, they are a registered dealer under the Tamilnadu Value Added Tax Act, 2006 [hereinafter referred to as 'the Act']. According to the petitioner, even before the deemed assessment under Section 22(2), the respondent

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has proposed to revise the assessment, under Section 22 (4) of the TNVAT Act, 2006. It is also their case that no personal hearing was afforded to the petitioner, before the assessment order was passed in the revision of assessment proceedings. It is also the case of the petitioner that as against the assessment order, dated 27.10.2015, an appeal was filed under Section 51 of the TNVAT Act, 2006, before the first respondent on 09.01.2017, which was returned by the first respondent on 10.01.2017, for the reason that the appeal has been filed beyond the prescribed period, under Section 51 of the TNVAT Act, 2009. Aggrieved by the said order, the instant writ petition has been filed.

3.Heard Mr.M.Azeem, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondent.

4.According to the learned counsel for the petitioner even before the deemed assessment as per Section 22(2) of the Act, the second respondent has proposed to revise the assessment. He drew the attention of this Court to the pre-revision notice, dated 11.08.2015 and to the assessment order dated 27.10.2015. According to him, the deemed assessment for the assessment year 2014-2015 gets completed only on 31.10.2015, whereas the pre-revision notice was issued on 11.08.2015 and assessment order was passed on 27.10.2015 and therefore, there is total non-application of mind on the part of the second respondent who has proposed to revise the assessment for the assessment year 2014-2015, even before the completion of the deemed assessment i.e., even before 31.10.2015. Further the learned counsel for the petitioner would submit that the first respondent without considering all these factors has summarily returned the appeal filed by the petitioner, under Section 51 of the TNVAT Act, 2006, on the ground that the appeal has been filed beyond the prescribed period as stipulated under Section 51 of the TNVAT Act, 2006. According to the petitioner, the entire tax liability as per the assessment order, dated 27.10.2015 has been duly paid by the petitioner as evident from certificate, dated 03.01.2017 issued by the second respondent.

5.Per contra, the learned Additional Government Pleader for the respondents would submit that being a statutory appeal, which provides for a prescribed period, the first respondent has rightly returned the appeal filed by the petitioner as the said appeal was filed beyond prescribed period of 60 days as stipulated under Section 51 of the TNVAT Act, 2006.

6.It is evident from the records that, admittedly, the pre-revision notice, under Section 22(4) of the TNVAT Act, 2006, was issued to the petitioner by the respondent, on 11.08.2015 and the assessment order was passed, on 27.10.2015 for the assessment year 2014-15. The deemed assessment under Section 22 (2) of the TNVAT Act, 2006, gets completed only on 31.10.2015. Therefore, by

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total non-application of mind, even before the completion of deemed assessment, the respondent has issued the pre-revision notice, dated 11.08.2015 proposing to revise the assessment and the assessment order was also passed on 27.10.2015.

7.As seen from the assessment order, no personal hearing was afforded to the petitioner, which is a mandatory requirement as per settled law.

8. In the light of the above observations, this Court is of the considered view that the respondents have violated the principles of natural justice, by not affording sufficient opportunity to the petitioner to raise all objections available to him under law. Further, it is the considered view of this Court that the first respondent, ought to have considered all the aforementioned factors, before returning the appeal filed by the petitioner, on the ground that the said appeal has been filed beyond the prescribed period. For the foregoing reasons, the petitioner is entitled to file an appeal. The petitioner cannot be deprived of his statutory right to file an appeal when the second respondent has by total non application of mind has passed the assessment order, dated 27.10.2015.

9.In the result, the impugned order, dated 10.01.2017, passed by the first respondent is hereby quashed and the petitioner is permitted to re-present the appeal before the first respondent, within a period of two weeks from the date of receipt of a copy of this order and on such re-presentation of appeal, the first respondent shall after affording sufficient opportunity to the petitioner to place all objections available to him under law shall pass final orders within a period of three months thereafter. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

Ls/ksa

To

1.The Appellate Deputy Commissioner of
Commercial Taxes,
Commercial Taxes Buildings,
Reserve Lane, Palayamkottai,
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2.The Additional Deputy Commissioner of
Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District.

+1CC TO MR.M.AZEEM, Advocate Sr. No. 53191
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 53380

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