BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.4239 of 2017
and
W.M.P.(MD)No.3379 of 2017

M/s.Raj Enterprises,
Represented by its Proprietor D.Robin,
43/10 A3, Scott Nagar Avenue,
Nagercoil-629 003. ... Petitioner

Vs.

The Commercial Tax Officer,
Nagercoil Tower Junction,
Nagercoil. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33446142229 / 2011-12 dated 26.12.2016 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after affording an opportunity of being heard to the petitioner by considering the reply dated 12.09.2016 filed by the petitioner.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

ORDER

The petitioner / dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') challenges an order of assessment dated 26.12.2016 passed for the period 2011-12 in terms of Section 27 of the Act.

2.The petitioner had received a pre-assessment notice dated 25.07.2016 proposing an enhancement of the turnover returned by the petitioner on the ground that the exemption claimed by the petitioner in relation to the sale of coconut oil, gingely oil, groundnut oil, sunflower oil, cotton seed, rice bran oil, palm oil, all refined oil and soya oil exceeded the threshold limit.

3.A detailed reply was filed by the assessee on 12.09.2016 to the effect that the exemption sought was in order. An opportunity of personal hearing was also sought prior to the conclusion of proceedings. The impugned order specifically refers to reply of the dealer dated 12.09.2016, but goes on to confirm the proposals in the show-cause notice without extending such opportunity of hearing.

4.In the light of the consistent stand taken by this Court and also supported by various Circulars issued by the Principal Commissioner and Commissioner of Commercial Taxes to the effect that a personal hearing is mandatorily to be extended to an assessee whether sought for or not prior to the conclusion of assessment proceedings, I am inclined to set aside the impugned assessment order on this score and do so. The petitioner will appear before the Assessing Authority on 31.07.2019 at 10.30 a.m., and no further hearing notice will be issued in this regard. After hearing the petitioner and considering all materials that may be placed by the dealer in support of its contention, orders shall be passed *de novo* by the Assessing Authority within a period of four weeks from the date of conclusion of personal hearing.

5.This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

Sub Assistant Registrar(CS)

ps
To
The Commercial Tax Officer,
Nagercoil Tower Junction,
Nagercoil.

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 75730

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and
W.M.P.(MD)No.3379 of 2017
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AL(CO)
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