BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.22482 of 2019

and

W.M.P.(MD).No.19265 of 2019

M.Sasikala ... Petitioner

Vs.

1.The Assistant Commissioner (ST)
Tirupparankundram Assessment Circle,
Madurai.

2.The State Tax Officer,
Tirupparankundram Assessment Circle,
Madurai.

3.The Branch Manager,
ICICI Bank,
Anna Nagar Branch,
Madurai-20. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st and 2nd respondents in their letter TIN No.33976232972/A3 and Form U issued under the Tamil nadu General Sales Tax Rules, 1959 dated 05.09.2019 and quash the same as it is unlawful, violation of the principles of natural justice and further direct the 1st respondent to lift the attachment of the bank account bearing No.056201501876 with ICICI Bank Limited, Anna Nagar Branch, Madurai and refund the amount of Rs.21,16,002.17/- collected without any authority of law.

For Petitioner : Mr.R.D.Ganesan

For Respondents 1 & 2 : Mrs.J.Padmavathy Devi
Special Government Pleader

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ORDER

This writ petition has been filed challenging the impugned letter in TIN No.33976232972/A3 and Form U issued by the respondents 1 & 2 under the Tamil Nadu General Sales Tax Rules, 1959, dated 05.09.2019 and further to direct the 1st respondent to lift the attachment of the bank account bearing No.056201501876 with ICICI Bank Limited, Anna Nagar Branch, Madurai and refund the amount of Rs.21,16,002.17/- collected without any authority of law.

2.The petitioner is a registered dealer for the supply of ready mix concrete to the builders and contractors, under the Tamil Nadu Value Added Tax Act, 2006. (hereinafter referred as TNVAT Act).

He filed returns for the assessment years 2009-10, 2010-11, 2011-12 and 2012-13 under Section 22(2) of the TNVAT Act. The Assessing Officer has passed assessment order, on 11.11.2013 without affording opportunity of personal hearing. Therefore, the said assessment order was challenged before this Court in W.P.(MD).Nos.3530 to 3533/2014. This Court, by its order dated 28.03.2014 set aside the assessment orders and directed the respondent to provide opportunity to file objections and that of personal hearing to the petitioner and further directed the respondent to consider the objections and thereafter pass appropriate orders. Thereafter, the petitioner has filed his objections on 16.04.2014. Even though it was received by the respondent, as directed by this Court, opportunity of personal hearing was not given. However, to his shock and surprise, an attachment order was passed by the first respondent on 07.09.2019. The first respondent has communicated a letter to the petitioner Bankers namely the second respondent on 05.09.2019 for freezing the account. Aggrieved over the same, the petitioner has approached this Court.

3.It is the contention of the petitioner that even though a specific direction was given by this Court to afford an opportunity of personal hearing, that direction was not complied with. No personal hearing was afforded to him and assessment order dated 12.12.2014 was also not served on him.

4.Per contra, the learned Special Government Pleader would vehemently contend that as per the directions of this Court, the objection filed by the petitioner dated 16.04.2014 was very well considered. The respondent has sent a notice dated 01.12.2014 calling upon him to attend the personal hearing with relevant records on 09.12.2014. This letter was despatched on 02.12.2014. However, the petitioner has not chosen to appear for personal hearing with relevant documents.

5.The entire dispute revolves around the notice of personal hearing and service of the assessment order. On perusal of the files produced by the respondent, it is seen that a person from the petitioner Company has received the notice on 02.12.2014. But the name of the person and as to whether he is an authorised representative of the petitioner are not known. Section 19 of the TNVAT Act spells that any notice, summons or order can be served on the dealer or his Manager or his agent or the legal practitioner appointed to represent him or to his authorised representative.

6.The contention of the learned counsel for the petitioner is that the said person was not authorised by him. When there is a procedure laid down by the department to recognize an authorised representative, serving the order on a person, who is not known and who is not an authorised person, will not satify effective service. Furthermore, a reading of the letter dated 01.12.2014 only shows that notice was despatched. But I do not find any acknowledgement or proof or dispatch endorsement in any of the registers, to show that it was actually despatched to the dealer or it was received by him before the actual date of hearing. In the absence of proof for sending the notice of hearing, as well as dispatch and receipt of order copy, it cannot be said that the respondent has strictly adhered to the directions issued by this Court in W.P.(MD).No.3530 to 3533 of 2014. Therefore, for want of materials to show that the notice of hearing was sent to the petitioner, this Court infers that the notice of personal hearing dated 01.12.2014 was not served on the petitioner and opportunity of hearing was not given to him. Further, the assessment order dated 12.12.2014 in TIN No.33976232972/A3 was also not served on the petitioner. Hence the assessment order stands set aside. In effect, the consequential attachment order dated 05.09.2019 also stands vitiated for violation of principles of natural justice.

7.In the result, the impugned proceedings dated 05.09.2019 as well as the assessment order dated 12.12.2014 stand set aside. The matter is remitted back to the respondent for fresh hearing.

8.Accordingly, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Assistant Commissioner (ST)
Tirupparankundram Assessment Circle,
Madurai.

2.The State Tax Officer,
Tirupparankundram Assessment Circle,
Madurai.

+1 cc Mr.R.D.GANESAN ,Advocate, SR.No. 96163
+1 cc Mr.ALAGURAM JOTHI ,Advocate, SR.No.96635
+1cc to M/s.Special Government Pleader,SR.No.96348

W.P(MD)No.22482 of 2019

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