BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.22860 of 2019
and
W.M.P(MD)No.19607 of 2019

Tara Exports,
rep. By its Partner,
Narayanan Bharathan
3D/1, Nelson Compound (upstairs)
Jeyaraj Road, Near Raj Hotel,
Thoothukudi. ... Petitioner

Vs.

The Assistant Commissioner (ST) (FAC)
Thoothukudi-III Circle,
Thoothukudi. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records on the file of the respondent in CST/483175/2015-16 dated 26.6.2019 and quash the same and to issue a pre-revision notice and grant the petitioner an opportunity to submit reply and a personal hearing and then pass orders according to law.

For Petitioner : Mr.M.Azeem

For Respondents : Mr.J.Gunaseelan Muthaiah
Addl. Government Pleader

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ORDER

Mr.J.Gunaseelan Muthaiah, learned Additional Government Pleader takes notice for the respondent.

2. By consent, the writ petition is taken up for final disposal.

3. The petitioner is a dealer in Cashew Nuts, registered under the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and the Central Sales Tax Act (CST). He filed returns for the assessment years 2015-16 reporting a total and taxable turn over of Rs.26,44,77,944/- and Rs.3,58,85,053 under the Central Sales Act. Against which, a pre-revision notice was issued by the Assessing Authority on 29.11.2016 in respect of the said assessment year, for which, the petitioner has not filed Form-C declaration. The Assessing Officer has found that the petitioner is not entitled to any consessional rate, against which, the petitioner filed his objections along with connected documents on 29.01.2019. The receipt of the same was acknowledged by the respondent on the same day. However, for the deemed assessment year 2015-2016, an impugned order dated 26.06.2019 came to be passed. Aggrieved over the same, the petitioner is before this Court.

4. According to the petitioner, as per Section 22(2) of the TNVAT Act, the deemed assessment year 2015-16 was completed only on 31.10.2016, whereas, if any order is not passed on or before 31.10.2016, then it is deemed to be completed and an order cannot be passed thereafter. Whereas, in this case, the assessment order came to be passed on 26.06.2019. Further, it is the contention of the petitioner that even before passing orders, opportunity of personal hearing was not given, as provided under Section 22(2) of the TNVAT Act.

5. The learned Counsel for the petitioner would reply on a copy of the circular issued by the Head of the Department in Acis Cell-VI/13234/2001, dated, 20.04.2001, wherein, it is instructed that issue of notice is necessary in all cases.

6.Be that as it may, before passing the impugned order, the respondent has not granted any opportunity of hearing and there is no reference to the objections and documents filed by the petitioner, even though it is acknowedged as early as on 29.01.2019.

7.The learned Additional Government Pleader appearing for the respondent has submitted that they are prepared to comply with the principles of natural justice and pass orders afresh.

8.Considering the above submissions, the impugned order dated 26.06.2019, issued by the respondent is set aside and the matter is remitted back to the Assessing Authority for fresh consideration.

In the process of passing orders, the respondent shall comply with the principles of natural justice, ie affording an opportunity of personal hearing to the petitioner. Such an order shalll be passed within a period of four weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner (ST) (FAC)
Thoothukudi-III Circle,
Thoothukudi.

+1 CC to M/s.M.AZEEM, Advocate SR-95743.
+1 CC to SPL GP SR-96102.

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