BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.08.2019
CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.14495 of 2016
and
W.M.P.(MD)No.10743 of 2016

S.Sakkeer Hussain,
Proprietor,Aslam Timbers,
Thanikuntu,
Maniyankuzhi Post - 629 161,
Kanyakumari District. ... Petitioner

/Vs./

The Commercial Tax Officer,
Thuckalay Assessment Circle,
Kattathurai,
Kanyakumari District - 629 158. ... Respondent

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent herein in TIN 33486165390/2011-12 (D.No.205), dated 13.06.2016 and quash the same as illegal, invalid, without jurisdiction and in violation of the principles of natural justice and consequently direct the respondent to issue a pre-assessment notice to the petitioner and after granting to the petitioner, an opportunity to submit reply and a personal hearing, pass orders according to law.

For Petitioner : Mr.M.Azeem
For Respondent : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

The petitioner challenges an order of assessment dated 13.06.2016 passed in terms of the provisions of the Tamil Nadu Value Added Tax, 2006 [in short 'Act'] for the period 2011-12. The main ground argued is that the impugned order is violative of the principles of natural justice, insofar as no pre-assessment notice has been issued by the respondent or received by the petitioner prior to framing of the impugned assessment.

2. Heard the learned counsel.

3. The impugned order, in the 'references' refers to pre-revision notice dated 31.03.2016. In the body of the order, the Officer refers to a notice issued to the dealer on 07.04.2016 received by the petitioner on 15.04.2016.

4. A different version is projected in the counter where, at Paragraph No.3, the Officer states that the pre-revision notice issued on 07.04.2016 was sent by RPAD on 11.04.2016. According to the Officer, the petitioner received the notice and acknowledgement to this effect has been received by the officer on 15.04.2016. There is thus no clarity or certainty with regard to the date of notice, when it was issued and when it was received by the petitioner.

5. The petitioner has also filed a communication dated 25.11.2016 from the Senior Superintendent of Post Offices, Kanyakumari Division, Nagercoil stating that no registered letter was delivered to the petitioner on 15.04.2016. Furthermore, there is a discrepancy in the address in the communication issued by the Postal Department, when compared with that in the impugned assessment order and the address in the cause title to the Writ Petition. Thus, the records were called for, which contains an acknowledgement for receipt of the pre-assessment notice. However, the signature on the acknowledgement card is illegible and in any event, not that of the petitioner, upon a comparison of the signature on the affidavit filed in support of this writ petition.

6. In the light of so much confusion and uncertainty in service, it would be appropriate, in my view, to afford one more opportunity of hearing to the petitioner. Thus, I set aside the impugned assessment order. The petitioner shall appear before the respondent on **19.08.2019 [Wednesday] at 10.30 a.m.**, for hearing and completion of assessment. No further notice need be issued in this regard. After hearing the petitioner and considering all materials that may be placed in support of its submission, an order of assessment *de novo* shall be passed by the officer, within a period of three weeks thereafter.

7. This Writ Petition is disposed of in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
Thuckalay Assessment Circle,
Kattathurai,
Kanyakumari District – 629 158.

+1 CC to Mr.M.AZEEM, Advocate (SR-80960[F] dated 09/08/2019)
+1 CC to SPL GP (SR-81471[F] dated 13/08/2019)

Order made in
W.P.(MD)No.14495 of 2016
Dated:08.08.2019

SM
MK (26.08.2019) 3P 4C