BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)No.24382 of 2019
and
WMP(MD)Nos.21009 & 21010 of 2019

M/s.J.B.International,
rep.by its Proprietor L.Jesudasan
No.93/84/3 New No.2/737,
Rajiv Nagar, Thoothukudi District. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (State Tax),
Commercial Taxes Buildings,
Reserve Line Road,
Palayamkottai,
Tirunelveli.

2.The Assistant Commissioner (State Tax),
Commercial Taxes Building,
Tuticorin - III Circle,
Tuticorin. ... Respondents

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 pertaining to the impugned proceedings passed by the 2nd respondent in TIN 33215924348/2014-15 dated 23.3.2018 and quash the same as the same is passed in gross violation of Principles of Natural Justice and direct the 2nd respondent to redo the assessment after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Division Bench of this Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd. represented by its Chief Executive officer Salem Vs. The Commissioner of Commercial Taxes Ezhilagam, Chepauk, Chennai.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Mrs.J.Padmavathi Devi, learned Special Government Pleader, takes notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission itself.

2.According to the petitioner, the impugned assessment order has been passed on the basis of the report forwarded by the Enforcement Wing officials. Further, for the assessment made under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, personal hearing is mandatory. Since the petitioner is deprived of from the opportunity of personal hearing, the impugned order passed by the second respondent is unsustainable in law and the same is liable to be quashed.

3.The impugned assessment order came to be passed on 23.03.2018. The learned counsel appearing for the petitioner would submit that the petitioner is undergoing treatment for tumor and suffering from neck pain till now.

4.Controverting the submissions of the learned counsel appearing for the petitioner, the learned Special Government Pleader appearing for the respondents would vehemently contend that the writ petition is not maintainable at this distance of time. When appeal remedy is available, the petitioner should have approached the appellate authority, instead, he approached this Court, after 1 ½ years.

5.I have considered the submissions of both parties.

6.Admittedly, appeal remedy is available to the petitioner and he can avail the same by way of filing an appeal.

7.Considering also the ailment of the petitioner, it is fit to direct the petitioner to approach the appellate authority. Accordingly, the petitioner is directed to file an appeal against the impugned assessment order dated 23.03.2018 before the appellate authority, within a period of two weeks from the date of receipt of a copy of this order. On such appeal being filed within a period of two weeks, the appellate authority shall entertain the same, without insisting the issue of limitation and pass orders on merits within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner.

8.The writ petition is disposed of accordingly. No costs. Consequently, WMP(MD)Nos.21009 & 21010 of 2019 are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The Appellate Deputy Commissioner (State Tax),
Commercial Taxes Buildings,
Reserve Line Road,
Palayamkottai, Tirunelveli.

2.The Assistant Commissioner (State Tax),
Commercial Taxes Building,
Tuticorin - III Circle,
Tuticorin.

+1 CC to Mr.K.SRINIVASAN, Advocate (SR-99267[F] dated 19/11/2019)

+1 CC to SPL GP (SR-100002[F] dated 20/11/2019)

W.P.(MD)No.24382 of 2019
19.11.2019

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