BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **25.11.2019**
CORAM:
THE HONOURABLE MR.JUSTICE **M.GOVINDARAJ**
W.P.(MD)No.24862 of 2019
and
W.M.P.(MD)No.21483 of 2019

M/s.Shivasri Medicals,
Rep. by its Proprietor,
Mr.Lakshmana Guptha
No.93, 18th Rastha, Thenkarai
Periyakulam, Theni Dist : Petitioner

Vs.

The Assistant Commissioner (CT),
Commercial Tax Department,
Madurai Road,
Theni-625 531. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the impugned notice Na.Ka.No.320/2015/A5, dated 31.10.2019 issued by the respondent and quash the same as illegal, arbitrary and to direct the respondent to consider the representation of the petitioner dated 15.10.2018.

For Petitioner : Mr.S.Velusamy
For Respondent : Mrs.S.Srimathy

ORDER

Mrs.S.Srimathy, learned Standing Counsel, takes notice on behalf of the respondent.

2. By consent, the Writ Petition is taken up for final disposal at the stage of admission itself.

3. The petitioner is a dealer in general goods. He filed monthly returns and paid taxes promptly. However, the returns filed by the petitioner for the assessment years 2008-2009 to 2013-2014 were rejected as incorrect and incomplete and an order was passed under best judgment method. According to the petitioner, the TIN numbers of the supplying dealers were found incorrect and the assessment was wrongly made with unconnected transactions. As per Section 22(6)(a) of the Tamil Nadu Value Added Tax Act, 2006, if any dealer assessed under this provision, as per Sub-Section (4), he can apply to the Assessing Authority for re-assessment with all correct and complete documents. In the event, it is filed, the Assessing Authority is empowered to make a fresh assessment on the basis of

the returns submitted. Whereas, without considering the returns submitted by him in time, the Assessing Authority, without affording opportunity of personal hearing, has passed that order. During the pendency of the same, the impugned notice dated 31.10.2019 came to be issued, directing him to pay the tax and penalty as assessed earlier. Aggrieved over the same, the petitioner is before this Court.

4. Heard both sides.

5. On a perusal of the assessment orders, it is seen that the documents filed by the petitioner with correct particular were not considered and moreover, opportunity of personal hearing was not at all granted. Without passing any order as per Section 22(4) of the Tamil Nadu Value Added Tax Act, 2006, the authority has proceeded with recovery proceedings. Considering the same, this Court is of the view that without deciding the application filed by the petitioner submitting all correct and complete details of the returns, the Assessing Authority shall not proceed with recovery proceedings.

6. In such view of the matter, the impugned notice dated 31.10.2019, is set aside and the Assessing Authority is directed to consider the documents submitted by the petitioner and after affording full opportunity of personal hearing, pass orders, within a period of four weeks from the date of receipt of a copy of this order.

7. The Writ Petition is allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner (CT),
Commercial Tax Department,Madurai Road,Theni-625 531.

+1 CC to M/s.S. VELUSAMY, Advocate (SR-101057[F] dated 25/11/2019)
+1 CC to M/s.SPL GP (SR-101945[F] dated 27/11/2019)
SML

Order made in
W.P.(MD)No.24862 of 2019
Dated: 25.11.2019

SMA/11/12/19/2P/4C