BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.06.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.3364 of 2011

N.Elavarasu,
Contractor,
No.4/38-A, Thangapudayanpatti,
Kurungulam West,
Thanjavur. ... Petitioner

Vs.

The Commercial Tax Officer (CT),
Thanjavur - II Assessment Circle,
Sanchidananda Moopanar Road,
Thanjavur. ... 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 of the respondent in Entry Tax A.No.22 of 2004-2005 dated 23.06.2005 and quash the same as illegal, arbitrary and without authority of law and also against the principles of natural justice and further direct the respondent to refund the tax and penalty amount collected from the petitioner.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.R.Murugan,
Additional Government Pleader.

ORDER

The Writ petitioner challenges an order of assessment passed in respect of the purchase of Asphalt Paver Finisher under the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990 (in short 'Act').

2.The order of assessment dated 23.06.2005 imposes tax and penalty.

3.Mr.K.Soundararajan, learned counsel appearing for the petitioner, upon instructions, fairly states that the petitioner does not wish to pursue the challenge to the assessment insofaras tax is concerned. The challenge now, is restricted only to penalty levied under Section 15(2) of the Act. He draws my attention to Section 15(2) of the Act, that specifically requires a notice to be issued to the assessee prior to levy of the same.

4.In the present case, though the impugned order, at column No.4 thereof, states that a notice has been issued to the petitioner, served on 25.03.2005, there is not a word of discussion in the order itself in regard to the levy of penalty or any discussion in that regard.

5.The provisions of Section 15 of the of the Act, read as follows:-

> *"15.Penalty.- (1) Where any person liable to pay tax under this Act falls to comply with any of the provisions of this Act, then the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing impose on him in addition to any tax payable, a sum by way of penalty not exceeding twice the amount of tax.*
>
> *(2) If the person does not, without reasonable cause, pay the tax within the time he is required, by or under the provisions of this Act to pay it, the assessing authority may, after giving such person a reasonable opportunity of being heard, by order in writing, impose upon him by way of penalty, in addition to the amount of tax and penalty under sub-Section (1) a sum equal to,-*
>
> *(a) one and one half per cent, of the amount of tax for each month for the first three months, after the last date by which the person should have paid that tax, and*
>
> (b) two per cent, of the amount of tax for each month thereafter during the time the person continues to make default in the payment of tax."

6.In the light of the aforesaid, seeing as a statutory mandate has been imposed upon the Assessing Officer to extend a reasonable opportunity of being heard to the petitioner, this order is set aside insofar as it relates to penalty alone. The Assessing Authority is given liberty to issue notice proposing the levy of penalty under Section 15 of the Act, within a period of two months from date of receipt of a copy of this order, since the transaction in question relates to the year 2004.

7.The Writ Petition is disposed of on the aforesaid terms and directions. No costs.

Sd/-

Assistant Registrar (Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

ps

To

The Commercial Tax Officer (CT),
Thanjavur - II Assessment Circle,
Sanchidananda Moopanar Road,
Thanjavur.

+ 1 CC TO Mr.K.Soundararajan, ADVOCATE IN SR No.71303
+ 1 CC to The Special Government Pleader SR.No.71234

W.P(MD)No.3364 of 2011

24.06.2019

KS(10.07.2019) 3 P 4 C