BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.12.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.9664 of 2014

and M.P.(MD).No.1 of 2014

(Through Video Conferencing)

A.Mahaveerchand ... Petitioner

Vs

The Commercial Tax Officer (CT),
Office of the Commercial Tax Officer,
Mannargudi, Tanjore. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in TNGST No.3861283/2005-06, dated 13.06.2013 and quash the same as illegal and direct the respondent to redo the assessment in accordance with law.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned assessment order, dated 13.06.2013 passed by the respondent under Section 16(1) of the Tamil Nadu General Sales Tax Act, 1959.

2. Heard Mr.S.Karunakar, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent.

3. The only ground raised by the petitioner is that the impugned assessment order has not been served on him and he came to know about the same only when he received the distraint notice on 22.11.2013.

4. However, according to the respondent, as seen from the counter affidavit filed by them before this Court, the impugned assessment order was duly served on the petitioner through registered post with acknowledgement due. According to them, service of the assessment order is in a proper manner, as per Rule 52 of the Tamil Nadu General Sales Tax Rules, 1959.

5. The learned Special Government Pleader for the respondent has placed before this Court the acknowledgement card with regard to the service of the assessment order on the petitioner.

6. This Court has perused the same. Even though the address of the petitioner is correct, the assessment order has been received by some other person, by named, G.Karthik. It is the contention of the learned counsel for the petitioner, as seen from the affidavit filed in support of the Writ Petition that the petitioner came to know about the passing of the impugned assessment order dated 13.06.2013 only through his ex-employee. According to the petitioner, immediately on receipt of the distraint order dated 11.03.2014, this Writ Petition has been filed.

7. As there is no sufficient documentary evidence to place before this Court to establish that the petitioner has been duly served with the impugned assessment order dated 13.06.2013, the benefit of doubt should be given to the petitioner. Further, as seen from the impugned assessment order, no personal hearing has also been afforded to the petitioner, which is mandatory.

8. Since an acknowledgement card has been produced by the respondent for having served the copy of the impugned assessment order, though the same is disputed by the petitioner, the only remedy available to the petitioner is to file the statutory appeal, aggrieved by the impugned assessment order. The petitioner cannot also be left remediless, since there is a doubt as to whether the petitioner was duly served with the impugned assessment order or not. Admittedly, there is a statutory appellate remedy available to the petitioner, aggrieved by the impugned assessment order. Having not exercised the said statutory appellate remedy, the petitioner must be permitted to exercise the same within a time frame to be fixed by this Court.

9. For the foregoing reasons, this Court directs the petitioner to file the statutory appeal under the provisions of Tamil Nadu General Sales Tax Act, 1959 and its Rules, as against the impugned assessment order, dated 13.06.2013 within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the Statutory Appellate Authority shall pass final orders on merits and in accordance with law, after affording sufficient opportunity to the petitioner, within a period of six weeks thereafter. It is made clear that till final orders are passed by the Statutory Appellate Authority, no coercive steps can be taken by the respondent against the petitioner.

10. With the aforesaid directions, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

The Commercial Tax Officer (CT),
Officer of the Commercial Tax Office,
Mannargudi, Tanjore.

W.P.(MD)No.9664 of 2014

02.12.2020

TP(CO)
TR(18.12.2020) 3P 2C