BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.19687 of 2016
and
W.M.P(MD)Nos.14206 & 14207 of 2016

M.Ramamoorthy ... Petitioner

Vs

Commercial Tax Officer,
Pattukkottai II Assessment Circle,
Pattukkottai,
Thanjavur District. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records in respect of the order passed in TIN:33984181562/2015-2016 dated 24.08.2016 and the attachment order in RC.No.748/2016/A3 dated 26.09.2016 by respondent and quash the same.

For Petitioner : Mr.M.Nedunchezhian

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

ORDER

This writ petition has been filed challenging the impugned assessment order, dated 24.08.2016, passed by the respondent and consequential attachment order, dated 26.09.2016.

2. Heard Mr.M.Nedunchezhian, learned counsel appearing for the petitioner, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondent.

3.The respondent has passed the impugned assessment order, dated 24.08.2016, under Section 15(1) of the Tamil Nadu Tax on Entry of Motor Vehicles into Local Areas Act, 1990. The petitioner is aggrieved by the imposition of 200% penalty under the impugned order, amounting to Rs.7,38,704/-. Insofar as the tax liability fixed under the impugned assessment order at Rs.3,69,352/- is concerned, the petitioner is willing to pay the said amount. He is aggrieved only by the levy of penalty amounting to Rs.7,38,704/- under Section 15(1) of the Tamil Nadu

Tax on Entry of Motor Vehicles into Local Areas Act, 1990.

4. According to petitioner, he has not received the pre-assessment notice from the respondent. It is his contention that the said notice was received by his brother and he is having a dispute with him.

5.The learned counsel for the petitioner has also referred to the judgment of the Hon'ble Supreme Court, in the case of **Hindustan Steel Ltd., Vs. State of Orissa**, reported in **AIR 1970 SC 253.** Relying upon the said decision, the learned counsel would submit that unless and until the party obliged either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest, it is not legally permissible to levy penalty.

6.The respondent has also filed his counter affidavit before this Court. In paragraph No.5 of the counter affidavit, he has admitted that the petitioner has not filed his objections to the pre-assessment notice, dated 29.07.2016 sent by him. According to respondent, the pre-assessment notice, dated 29.07.2016, was served on the petitioner on 04.08.2016, but, the acknowledgement receipt has not been produced by him, before this Court.

7.According to the petitioner, he has not received the pre-assessment notice, dated 29.07.2016 and it was only received by his brother with whom, he is having a dispute. The tax liability of the petitioner under the impugned assessment order is Rs.3,69,352/-, whereas, the penalty amount is Rs.7,38,704/-, which is 200% more than that of the tax amount. The petitioner must be given sufficient opportunity to place all his objections with regard to the levy of penalty. Since, no documentary evidence is available on record before this Court, with regard to service of the pre-assessment notice, dated 29.07.2016, on the petitioner, the impugned assessment order, with regard to levy of penalty on the petitioner to the tune of Rs.7,38,704/- has to be quashed and the matter has to be remanded back to the respondent for fresh consideration, with regard to penalty amount alone.

8.The learned counsel for the petitioner, on instructions, would submit that the petitioner is ready and willing to pay the tax amount of Rs.3,69,352/- within a period of four weeks from the date of receipt of a copy of this order.

9. After recording the submissions of the respective counsel, the following order is passed by this Court :-

(a) The petitioner shall pay a sum of Rs.3,69,352/- to the respondent within a period of four weeks from the date of receipt of a copy of this order and in case, he has paid any amount, subsequent to the filing of the writ petition, the same shall be adjusted in the balance amount to be paid to the respondent, within the aforementioned period.

(b) On receipt of the sum of RS.3,69,352/- towards tax liability of the petitioner, the impugned assessment order, dated 24.08.2016, shall stand quashed and the matter remanded back to the respondent for fresh consideration with regard to the penalty amount alone, under the impugned assessment order.

(c) The respondent shall pass final orders on merits and in accordance with law, after giving sufficient opportunity to the petitioner and also after affording personal hearing to the petitioner, within a period of eight weeks, thereafter.

10. With the aforesaid directions, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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,
Pattukkottai II Assessment Circle,
Pattukkottai, Thanjavur District.

W.P.(MD)No.19687 of 2016
15.10.2020

SRK(CO)
TR(22.10.2020) 3P 2C