IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.9557 of 2015
and M.P.No.1 of 2015

Thirumalai Chemicals Limited,
Represented by its Authorised Representative,
N.Nambirajan ... Petitioner

vs.

1. The Assistant Commissioner (CT),
   Ranipet (Sipcot) Assessment Circle,
   Ranipet (Sipcot).

2. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Buildings,
   Vellore.

.. Respondents

Prayer : Writ petition is filed under Article 227 of the Constitution of India, praying for a writ of Certiorarified Mandamus calling for the records on the files of the 2nd respondent in N.Dis.211/2015(CST) dated 27.02.2015 and connected proceedings of the 1st respondent in CST 352030/2006-07 dated 16.12.2014 and quash the same and further direct the 1st respondent to pass order afresh in accordance with law.

For petitioner : Mr.S.Senniappan
For Respondents : Mr.R.Swarnavel
Government Advocate.

ORDER

In this writ petition, the petitioner has challenged the impugned communication dated 27.02.2015 of the office of the second respondent and the impugned order dated 16.12.2014 passed by the first respondent.

2. The Petitioner had suffered an adverse assessment order in the hands of the first respondent vide order dated 16.12.2014. Against the said appeal, the petitioner filed an appeal before the second respondent which came to be returned vide impugned Memo dated 27.2.2015 with the following observation:-

> " You have disputed an amount of Rs.3,63,778/- in the form x (co.6(e) stating that " tax paid not taken into account (Ref.Jn'07) monthly Return". In this regard you are informed that payments made towards monthly tax dues can not be disputed before this forum. Therefore, the amount of rs.3,63,776/- can not be taken as disputed tax. Therefore for the reason of non payment of Rs.3,63,778/- the appeal papers are returned herewith".

3. Challenge to the impugned order dated 16.12.2014 of the first respondent is that it has been passed in gross violation of principle of natural justice inasmuch as the said order was passed without giving the petitioner an opportunity of being heard. The challenge to the impugned order/memo dated 27.02.2015 of the second respondent is that it has wrongly denied the petitioner the opportunity of having its appeal heard by issuing the memo.

4. It is submitted that even if there was any irregularity in the appeal, it is for the second respondent to pass the speaking order after hearing the petitioner instead of returning the appeal with the impugned memo. Learned counsel for the petitioner submits that since the order of the first respondent dated 16.12.2014 has been fast in violation of this was a natural justice, the impugned orders may be set aside and the case be remitted back to the first respondent to pass a fresh order after giving the petitioner an opportunity of being heard.

5. Learned counsel for the Commercial Tax Department submits that the petitioner has filed an appeal against the order of the first respondent before the second respondent and therefore the petitioner should remove the defects pointed out and pursue with the Appellate remedy for the second respondent Appellate Deputy Commissioner.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the respondents. I have also perused the impugned order passed by the first respondent on 16.12.2014. The said order has been passed without hearing the petitioner, thus in violation of principle of natural justice. It also does not state that a notice was issued to the petitioner and or the petitioner deliberately refused to attend the personal hearing. Serial No.8 in the preamble to the impugned order dated 16.12.2014 of the 1st respondent also indicates that there was no representation on behalf of the petitioner when the impugned order was passed.

7. The dispute pertains to the assessment year 2006-7. Therefore, even though the petitioner had filed an appeal before the second respondent which came to be returned vide impugned memo dated 27.02.2015, I am of the view, no useful purpose would be served by asking the petitioner to pursue the appellate remedy before the second respondent inasmuch as the second respondent as an appellate authority will be duty-bound to remit the case back to the 1st respondent for passing a fresh order denovo.

8. Therefore, to meet the ends of justice, I am inclined to set aside the impugned order dated 16.12.2014 passed by the first respondent and quash the same. For the same reason, the impugned memo dated 27.02.2015 of the 2nd respondent is also quashed. I therefore remit the case back to the first respondent to pass a fresh order within a period of three months from the date of receipt of a copy of this order.

9. Needless to state, before fresh out of the past by the first respondent, the petitioner shall be heard by the first respondent.

10. The present writ petition stands allowed with the above observation. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd
To

1.The Assistant Commissioner (CT),
Ranipet (Sipcot) Assessment Circle,
Ranipet (Sipcot).

2.The Appellate Deputy Commissioner (CT),
Commercial Taxes Buildings,
Vellore.
+1 cc to Mr.Senniappan, Advocate Sr.No. 6963
+1 cc to The Government Pleader Sr.No. 6888

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MG(CO)
RMP(17/03/2021)