IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.04.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.12773 of 2017

Magneti Marelli SKH Exhaust Systems Pvt. Ltd.,
Rep.by its Manager (Finance)
Plot No.196, Chennai Bangalore Highway,
Opposite to Nokia, Sriperambudur,
Chennai-602 105. .. Petitioner

vs.

1.The Assistant Commissioner (CT),
Sriperambudur Assessment Circle,
Varadharajapuram, Nazarathpet, Poonamallee Taluk,
Chennai-603 108.

2.Commissioner of Commercial Taxes,
Chepauk, Chennai-600 005.

3.Government of Tamil Nadu
Rep.by its Secretary,
Commercial Taxes Department,
Fort St.George, Chennai-600 009. .. Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari calling for the records relating to the Impugned Order passed by the 1st respondent in TIN: 33711668586/2014-15 dated 03.04.2017, quash the same.

For petitioner :Mr.Raghavan Ramabadran

For Respondents :Mr.M.Hariharan
Additional Government Pleader (Taxes)

ORDER

The writ on hand is filed questioning the order of rejection rejecting the refund of sales tax by the first respondent in order dated 03.04.2017.

2. The learned counsel appearing for the petitioner made a submission that the sales tax on excise duty does not arise and the said ground was elaborately set out in the application seeking refund of the claim.

3. The learned counsel appearing for the petitioner states that the application is filed raising certain specific reasons for the purpose of refund of excise duty on sales tax. However, the respondent has passed impugned order without providing any opportunity to the writ petitioner and rejected

the application by taking an unilateral decision. Thus, the order impugned is in violation of the principles of the natural justice.

4. The learned counsel appearing for the respondent disputed the contention by stating that a revision is provided under Section 54 of the Act and the petitioner has to approach the Revisional Authority for the purpose of reviewing the order.

5. Undoubtedly, an aggrieved person has to file an appeal or revision as the case may be. However, in the present case, the respondents have not even issued notice nor heard the petitioner for the purpose of deciding the issues raised by the petitioner in his application. Such a valuable opportunity is to be provided in order to adjudicate the issues raised. The learned counsel appearing for the respondent is unable to establish that an opportunity was provided to the petitioner. Thus, the petitioner need not be driven before the Authority, instead, the case may be remanded back for the purpose of fresh adjudication which would serve the cause of justice. Accordingly, the impugned order passed by the respondent in proceedings

dated 03.04.2017 is quashed and the matter is remanded back to the first respondent for fresh adjudication. The impugned order shall be treated as a notice issued to the petitioner and the first respondent is directed to conduct a fresh adjudication by providing an opportunity to the writ petitioner and grant personal hearing and pass final orders. The said exercise is directed to be done within a period of four months from the date of receipt of a copy of this order. The petitioner is directed not to seek any unnecessary adjournments on flimsy reasons. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is also closed.

21.04.2021

ssb
Index: Yes/No
Internet:Yes/No
Speaking order/Non-Speaking Order

S.M.SUBRAMANIAM, J.

ssb

To
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