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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.936 of 2021 and
W.M.P.(MD)No.794 of 2021

Tvl.Annamalaiyar Timbers,
Rep. by its Proprietrix:R.Bhuvaneswari,
No.40/B-1, Sevalpatti South Street,
Rajapalayam, Virudhunagar District. ... Petitioner

Vs.

The State Tax Officer(Inspection Cell),
Virudhunagar,
Tirunelveli Division. ... Respondent

Prayer: Writ petition is 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 herein in No.33BMGPB8817B1ZI/2017-18(Case ID No.TVL-027-20200213) dated 07.11.2020 quash the same as illegal, invalid and violative of the principles of natural justice and further direct the respondent to pass order afresh after furnishing the copies of the entire records that are all relied on for the assessment and after verifying the petitioner's books of accounts and thereafter giving an opportunity to the petitioner to file their objections and thereafter affording a personal hearing to the petitioner to put forth their case.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mrs.S.Srimathy,
Special Government Pleader.

O R D E R

Heard the learned counsel on either side.

2. With their consent, the writ petition is taken up for final disposal.

3. What is under challenge in this writ petition is an order dated 07.11.2020 passed by the respondent levying tax and penalty on the petitioner herein. The assessment order pertains to 2017-18. It is not necessary to go into the factual details.

4. Suffice it to say, the impugned order is liable to be quashed on the ground of violation of principles of natural justice. It is seen from the records that the respondent issued show cause notice dated 01.10.2020. The petitioner was given 30 days to offer his objections. Only thereafter, personal hearing will have to be conducted. But then, the personal hearing was fixed on 31.10.2020 itself. The question of issuing personal hearing notice will arise only if the assessing authority is not satisfied with the explanation given by the assessee in response to the show cause notice. If the authority fixes the personal hearing notice in the

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show cause notice itself, that would mean that he has already predetermined the issue. In the case on hand, the assessee appeared on 29.10.2020 and asked for time so that he could furnish certain documents. But then, without independently considering the said request, a composive order has been passed. In the impugned order, the said request for adjournment has also been rejected.

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5. Looked at from any angle, the impugned order cannot be sustained. The order impugned in this writ petition is quashed and the matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The petitioner is given four more weeks to offer his objections. The respondent is directed to facilitate the service of photo copies of the documents seized from the petitioner herein. This shall be done within a period of two weeks from the date of receipt of a copy of this order. After the petitioner offers his additional objection and furnish his documents in support of explanation, the respondent will independently consider the same. If the respondent is not satisfied, he will issue personal hearing notice and thereafter, pass orders in accordance with law. The petitioner's counsel on instructions gives an undertaking that the petitioner will definitely cooperate with the enquiry and not adopt any dragging on tactics.

6. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pmu

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 State Tax Officer(Inspection Cell),
Virudhunagar,
Tirunelveli Division.

+1 CC to M/s.A.CHANDRA SEKARAN, Advocate (SR-3563[F] dated 05/02/2021)

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MJ(CO)
KK(15.02.2021) 2P 3C

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