BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.02.2021
CORAM
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**
W.P.(MD)No.1664 of 2021
and
W.M.P.(MD)No.1407 of 2021

Tvl.Jeyam Motors,
represented by its Proprietor,
S.Rajapandian, : Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
Thirumangalam,
Madurai District-625 706. : Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the second respondent in TIN No.33905043839/2014-15 (Entry Tax) dated 31.08.2020 and quash the same.

For Petitioner :Mr.B.Rooban
For Respondent :Mr.S.Dayalan
Government Advocate

ORDER

Heard the learned Counsel appearing on either side.

2.The petitioner is an assessee registered with the second respondent. The petitioner was earlier visited with an adverse order, dated 30.10.2015. The petitioner questioned the same by filing a Writ Petition in W.P.(MD)No.2563 of 2016. The said Writ Petition was allowed vide order, dated 22.07.2019 and the matter was remitted to the file of the second respondent in the following terms:

"3. Though the order of assessment is impugned before me, learned counsel for the petitioner restricts his plea to the set off of Value Added Tax [in short 'VAT'] against the entry tax liable to be paid in terms of Section 4 of the Entry Tax Act. That is so. However, the petitioner has not filed his objections to the assessment proposal when it could have raised the question of set off.

4. Be that as it may, the assessing authority has also granted no opportunity of personal hearing. Balancing the interests of justice, I am thus inclined to remand the matter and set aside the impugned order. Mr.A.Thiyagarajan, appearing for the respondents does not have any serious objection to such remand.

5. The petitioner will appear before the assessing officer on 09.08.2019 [Friday] at 10.30 a.m., and produce all particulars in support of its stand, including the question of set off of VAT as against entry tax liability. No further notice need be issued to the petitioner in this regard. After affording reasonable opportunity of hearing and considering any material that may be filed by the petitioner, orders will be passed de novo by the assessing officer, within a period of four weeks from date of conclusion of personal hearing.

6. This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed."

3.Pursuant to the order of remand, the petitioner appeared before second respondent and submitted their objection. The same is also enclosed at Page No.12 of the typed set of papers. Even though, this Court had specifically stated that the point of set off should also be dealt with, in the impugned order, dated 31.08.2020, I find that the set off point has not at all been dealt with. There is considerable force in the contention of the learned Counsel for the petitioner that the direction given by this Court has not been complied with by the second respondent.

4.In this view of the matter, the order impugned in this Writ Petition is set aside. The second respondent need not issue any more hearing notice to the Writ Petitioner. All the materials are very much on record. The second respondent will consider the same and pass fresh orders in accordance with law.

5.Accordingly, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Cs-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2.The Assistant Commissioner (ST),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
Thirumangalam,
Madurai District-625 706.

+1 CC to M/s.B.ROOBAN, Advocate (SR-4749[F] dated 12/02/2021)

+1 CC to M/s.SPL GP (SR-4969[F] dated 15/02/2021)

W.P.(MD)No.1664 of 2021
11.02.2021

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KB(22.02.2021) 3P 5C