BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.03.2021
CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.19347 of 2020 and
W.M.P.(MD)Nos.16153 & 16154 of 2020

M/s.Janapriya Supermarket,
Rep. by its Partner,
K.Shahul Hameed,
No.50, Jawahar Street,
Karaikudi - 630 001. ... Petitioner

Vs.

The Commercial Tax Officer(FAC),
Karaikudi,
Now known as
State Tax Officer,
No.50-52, Jawahar Street,
Karaikudi - 630 001. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33565483339/2013-2014 dated 26.05.2016 and the consequential deemed Notice in TIN No.33565483339/2013-2014 dated 02.12.2020 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan

For Respondent : Mr.G.Arjunan,
Government Advocate.

O R D E R

Heard the learned counsel on either side.

2.The petitioner is a dealer in Grocery and Stationery items. The petitioner had registered itself with the respondent. The case on hand pertains to the assessment year 2013-2014. The respondent issued pre-revision notice dated 29.03.2016. The petitioner submitted its objection dated 11.04.2016. Thereafter, the impugned order dated 26.05.2016 came to be passed. Since the petitioner did not pay the amount demanded in the said order, action for recovering the tax arrears were initiated. The respondent issued communication dated 02.12.2020 calling upon the petitioner to pay a sum of

Rs.6,82,835/-. Thereafter, the present writ petition came to be filed.

3.The respondent has filed detailed counter affidavit seeking to sustain the impugned orders. The learned Government Advocate took me through the same and also pointed out that this writ petition is liable to be dismissed for non-exhaustion of the alternative remedy of appeal available to the petitioner.

4. I carefully went through the materials on record.

5. The first contention raised by the petitioner's counsel is that the order dated 26.05.2016 which is the primary order was never served on the petitioner. The respondent would deny the said assertion. The respondent has filed an affidavit in which he had claimed that the impugned order dated 26.05.2016 was duly served on the petitioner. It is further stated in the said affidavit that the service was done through the office assistants, namely, C.Alagarsamy and M.Thennarasu. But both of them are no more.

6.I wanted to know, if there is any acknowledgement issued by the petitioner's Manager or the authorised representative or its legal counsel or any member of the petitioner's family. The respondent is not able to produce any material to show that the order dated 26.05.2016 was actually served in the manner set out in Rule 19 of Tamil Nadu Value Added Tax Rules, 2007. Therefore, the petitioner cannot be non-suited on the ground of latches.

7.After receiving the pre-revision notice, the petitioner in his objections has stated as follows:-

8.The petitioner wanted the respondent to check the returns enclosed along with the said reply dated 11.04.2016 and revert to them, if necessary. In other words, the petitioner was demanding personal hearing. Even if the petitioner has not made such a request, still the respondent is statutorily obliged to afford an opportunity of personal hearing. It is beyond dispute that the impugned order dated 26.05.2016 was passed without affording such hearing to the petitioner. Therefore, the orders impugned in this writ petition are quashed.

To
The Commercial Tax Officer,
Karaikudi
Commercial Tax office,
11.04.2016
Karaikudi-630001.

Dear Sir,

Sub.. Fixed Assets Value difference for Fy 2013 - 14 - Reg.

Ref.. 1) Your Office letter dt 29.03.2016
2) TIN:33565483339 JANAPIRIYAA SUPER MARKET, KARKUDI

*** *** ***

INR.19,39,582/-is Depreciation and also we have bought some miscellaneous assets for INR 55899/-. So, Totally it will come around INR 18,83,683/- **(Difference as per your notice dt.29.3.2016)**. Already we have shown that difference amount (Depreciation) INR 19,39,582/-in Profit & Loss account and INR 55,899 (Added Fixed assets) in Balance Sheet in the Income Tax return for the Fy.2013-14.So, we think no need to pay taxes & penalties. Please advise us.

Herewith we have enclosed the copy of return for your ready reference.

Please check it & let us know if you need anything further

This is for your kind information.

Particulars	Opening Value (in Rs.)	Additional (in Rs.)	Depreciation (in Rs.)	Closing Value (in Rs.)
Fixed Assets	10798932.00	55899.00	1939582.00	8915249.00

Thanking you,
Yours faithfully,
For Janapiriyaa Super Market

Managing Partner

9.The petitioner is directed to appear before the respondent on 12.03.2021 at 11.00 a.m. On the said date, the respondent will afford an opportunity of personal hearing to the petitioner. The petitioner can also place additional material in support of their contention.

10.I make it clear that the petitioner will not receive any notice. The petitioner also will not plead limitation. Technical objections that the adjudicating officer is different from the one who issued the pre-revision notice will not be taken.

11.With these clarifications and directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

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.

PMU

To:
The Commercial Tax Officer(FAC),
Karaikudi,
Now known as
State Tax Officer,
No.50-52, Jawahar Street,
Karaikudi - 630 001.

+1CC M/S K.SOUNDARARAJAN (CC NO.9305)
+1CC THE SPECIAL GOVERNMENT PLEADER (CC NO.8736)

W.P.(MD)No.19347 of 2020
03.03.2021

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