BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**12.07.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.20041 of 2020

and

W.M.P(MD)No.16687 of 2020

Anjappar Chettinad A/C Restaurant,
Represented by its Partner A.Maruthapandian ... Petitioner

Vs.

The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy – 620 018. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records relating to the Assessment Order TIN/33216383550/2017-18 dated 11.11.2020 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.Joseph Prabakar

For Respondents : Mr.P.Thilak Kumar, Government Advocate

ORDER

The petitioner has filed this writ petition challenging the impugned order of assessment passed by the respondent in TIN/33216383550/2017-18 dated 11.11.2020.

2. The brief facts of the case are as follows:

The petitioner Firm is running a Hotel called Anjappar Chettinad A/C Restaurant and was registered with VAT Department earlier and now with the GST Department. The petitioner reported total turnover of Rs.84,10,761/- for the year 2018-18 and filed monthly returns under Section 7(1)(b) of the TNVAT Act, 2006 and paid VAT at 2%. While so, the respondent based on the audit objection raised by the Accountant General's office, issued a notice dated 23.03.2020 stating that the sale of food by the petitioner in their restaurant would be liable to tax at 14.5% and not at 2%. Because of the pandemic period, the petitioner had closed the restaurant till May 2020. Hence, the petitioner could not respond to the notice sent by the respondent. While the matter stood thus, without giving any opportunity for explaining his case, the respondent had passed the impugned order dated 11.11.2020. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that before passing the impugned assessment order, necessarily opportunity should be given to the petitioner to explain his case and therefore, the impugned order is to be set aside . In support of his case, the learned counsel for the petitioner has relied on the decision reported in ***2018-VIL-99-MAD(M/s DELPHI AUTOMATIVE SYTEMS*****P LTD Vs THE ASSISTANT COMMISSIONER(CT), CHENNAI).**

4. The learned Government Advocate appearing for the respondent by reiterating the averments made in the counter affidavit would state that there is an appeal remedy available to the petitioner before the Appellate Deputy Commissioner(ST), Trichy and therefore, this writ petition is not maintainable.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent and perused the materials placed before the Court.

6. Admittedly, the petitioner has not given reply to the notice issued by the respondent on 23.02.2020 and the impugned order came to be passed on 11.11.2020 which is an ex-parte order. The learned counsel for the petitioner has specifically contended that because of the pandemic situation, the petitioner's Restaurant was closed till May 2020. Section 27 of the Tamil Nadu Value Added Tax Act, 2006, provides for reasonable opportunity includes the personal hearing under Section 27(4) of the Act, which is mandatory. However, the petitioner due to the reasons stated above, had not responded to the notice and the respondent passed the impugned order without complying with Section 27(4) of the Act and without affording an opportunity of personal hearing and therefore, considering the facts and circumstances of the case, this Court is of the considered view that the petitioner ought to have been given a personal hearing and therefore, I am inclined to set aside the impugned order and the matter be remanded to the authorities for fresh consideration.

7. Accordingly, this writ petition is allowed and the impugned order passed by the respondent dated 11.11.2020, is set aside and the matter is remanded back to the respondent for fresh consideration after giving reasonable opportunity including the personal hearing as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006 and to pass appropriate orders on merits and in accordance with law. Such exercise shall be completed by the respondent, within a period of three months from the date of receipt of a copy of this order. The petitioner shall also produce the records available with them at the time of personal hearing. No

Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

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 Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy - 620 018.

+1 CC to M/s.SPL GP (SR-22511[F] dated 14/07/2021)

W.P(MD)No.20041 of 2020
12.07.2021

CM(CO)
KB(29.07.2021) 3P 3C