BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.13964 of 2016 and
W.M.P.(MD)No.10389 of 2016

M/s.Kulandaivel Agencies,
Rep. by its Proprietor,
K.Srinivasan,
No.4/568, Main Road,
Uranipuram, Orathanadu Taluk,
Thanjavur District. ... Petitioner

Vs.

The Commercial Tax Officer(FAC),
Pattukkottai -II Assessment Circle,
Pattukkottai,
Orathanadu Taluk,
Thanjavur District. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in TIN 33294181117/2008-2009 dated 09.05.2016 and quash the same as illegal, arbitrary and against the provisions of the Act.

For Petitioner : Mr.K.Soundararajan
For Respondents : Mr.G.Arjunan,
Government Advocate.

O R D E R

Heard the learned counsel on either side.

2. The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2008-2009. The petitioner's original assessment was concluded and finalised on 09.06.2011. Finding that there were certain discrepancies, action was initiated under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 by issuing notice dated 31.03.2016. This notice was issued well within limitation. The petitioner offered his objections. Not satisfied with the same, the impugned order dated 09.05.2016 came to be passed. The same is assailed in this writ petition.

3. The respondent has filed his counter affidavit and wanted this Court to sustain the order impugned in this writ petition.

4. Though very many grounds have been raised in the writ petition, the order impugned is liable to be quashed for the simple reason that personal hearing was not granted after receiving the objections from the petitioner.

5. It is true that the final paragraph in the pre-revision notice, there is a mention that it is open to the assessee to avail an opportunity of personal hearing within seven days from the date of receipt of the notice. But such offer is not sufficient. The offer of personal hearing has to be made after receiving objections from the assessee. Such an opportunity was not granted in this case.

6. On this sole ground, the order impugned in this writ petition is quashed.

7. At this stage, the assessing officer who is present through Video Conferencing states that he is ready to hear the petitioner in person on 22.03.2021 at 11.00 a.m. in his office.

8. The petitioner's counsel states that the petitioner will treat this as notice and will not insist on issuance of separate personal hearing notice. I have already held that the pre-revision notice was issued well within time. Therefore, the period from 28.06.2016 to 02.03.2021 will be excluded for computing limitation.

9. I am aware that the Commissioner of Commercial Tax has issued Circular stating that an officer who issued pre-revision notice should be the one to pass the final adjudication order. But in the case on hand, this requirement cannot be complied with. If the respondent passes any order adverse to the petitioner, this contention will not be taken by the petitioner.

10. This writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// 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 Commercial Tax Officer(FAC),
Pattukkottai -II Assessment Circle,
Pattukkottai,
Orathanadu Taluk,
Thanjavur District.

+1 CC to M/s.K.SOUNDARARAJAN, Advocate (SR-8571[F] dated 03/03/2021)

W.P.(MD)No.13964 of 2016

02.03.2021

CN(03.05.2021) 3P 3C