BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.12156 to 12160 of 2017

and

W.M.P.(MD)Nos.9371 to 9375 of 2017

In W.P.(MD)No.12156 of 2017

M/s.Tirunelveli Lala Sweet Stall,
Represented by its Proprietor K.Mayil Vakanan,
155-E, West Great Cotton Road,
Tuticorin. ... Petitioner

-Vs-

The Commercial Tax Officer-I,
Commercial Tax Building,
Tuticorin. ... Respondent

Common Prayer: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33475820803/2013-14, dated 17.05.2017 2012-2013;2011-12 dated 16.05.2017; 2010-11 dated 16.05.2017; 2009-10 dated 16.05.2017; and to quash the same as illegal, arbitrary and against the principles and natural justice and further, direct the respondent to pass assessment order afresh after furnishing records as requested by the petitioner vide their representation dated 27.01.2016 including opportunity of being heard.

For Petitioner : Mr.N.Sudalai Muthu

For Respondent : Mr.G.Arjunan
Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The cases on hand pertain to the assessment years 2009-10 to 2013-14. The assessments of the petitioner concluded under Section 22 of the Act were sought to be reopened. Pre-revision notices were issued on 18.01.2016. The petitioner's objections were called for. The petitioner submitted his objections dated 27.01.2016. The objections were served in person on the office of the respondent and the same was duly acknowledged. Copy of the acknowledgment is enclosed at Page No.25 of the typed set of papers. However, the impugned orders proceed on the premise that no reply was received. Challenging the same, these writ petitions have been filed.

3.In Paragraph No.7 of the affidavit filed in support of these writ petitions, it has been specifically averred that the reply dated 27.01.2016 was filed and it was also acknowledged on the office of the respondents on the same date. However, in the counter affidavit filed by the respondent, this assertion has not at all been controverted and dealt with. In any event, the proof of service enclosed at Page No.25 of the typed set of papers has also not been questioned.

4. Hence, I have to necessarily proceed on the footing that even though the reply was received by the respondent, the same was ignored while passing the impugned order. This is good enough ground to quash the impugned orders. That apart, as rightly pointed out by the learned counsel for the petitioner, the impugned orders are vulnerable on two more counts.

(a) the officer who passed the impugned orders did not issue the pre-revision notices.

(b) no personal hearing was granted.

5.That apart, the case of the respondent rests on mismatch. But then, the procedure laid down in J.K.M.Graphics Solutions Private Limited case was not followed. Thus, on atleast four counts, the orders impugned will have to be quashed. They are accordingly quashed. These Writ Petitions are allowed. The matter is remitted to the file of the respondents to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Rmi

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-I,
Commercial Tax Building,
Tuticorin.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-9345[F] dated 08/03/2021)

+1 CC to M/s.SPL GP (SR-9506[F] dated 08/03/2021)

W.P.(MD)Nos.12156 to 12160 of 2017
and
W.M.P.(MD)Nos.9371 to 9375 of 2017

PM(CO)
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