BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.03.2022

CORAM

THE HONOURABLE MR. JUSTICE C.SARAVANAN

Writ Petition (MD) No.6683 of 2021

and

W.M.P.(MD)No.5156 of 2021

Tvl.R.S.U. Selvaraj and Sons,
Rep. by its Partner,
S.Suresh,
S/o.Selvaraj,
27, Chettipathu Road,
Udangudi. .. Petitioner

Versus

1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Buildings,
Reserve Line, Palayamkottai,
Tirunelveli.

2.The State Tax Officer,
Commercial Taxes Building,
Tiruchendur. .. Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings passed by the second respondent in TIN:33075901339/2013-14, dated 26.08.2019, quash the same as illegal and passed by grossly violating the principles of natural justice and to re-do the assessment after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.A.Satheesh Murugan

For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

This is a second round of litigation before this Court. Earlier, an assessment order was passed on 29.12.2017. Aggrieved by the said order, the petitioner preferred W.P.(MD)No.5014 of 2018 before this Court. This Court, by order dated 16.11.2018, allowed the said Writ Petition, by quashing the abovesaid assessment order and remitted the case back to the second respondent to pass orders afresh in accordance with law.

2.Pursuant to the above said order, the petitioner was served with a notice dated 22.04.2019, whereby it was informed that the petitioner should appear for a personal hearing on 08.05.2019. It appears that the petitioner had requested the second respondent to adjourn the case on the personal engagement of the petitioner in connection with a Wedding in the family. Thereafter, the petitioner has filed a reply on 17.06.2019.

3.It is the case of the petitioner that the impugned order has been passed without calling the petitioner for personal hearing. It is noticed that in the above said letter, the petitioner has not requested for a personal hearing. The reply of the petitioner dated 17.06.2019, merely requested the second respondent to drop the proceedings. The second respondent has thus, passed the impugned order after considering the reply filed by the petitioner on 17.06.2019. It is the case of the petitioner that the reply was filed by the petitioner's Accountant namely, Thomas Edison and that no personal hearing was conducted. It is submitted that since there is violation of principles of natural justice, it would entitle the assessee, to a relief, in this case.

4.It is noticed that the petitioner has been given adequate opportunities and that after filing of the Writ Petition and getting an order quashing the earlier assessment order dated 29.12.2017, the petitioner did not file any reply until a notice of personal hearing was issued on 22.04.2019. It was incumbent on the part of the petitioner to file a reply on an earlier occasion and should have requested for personal hearing. The petitioner filed a reply only on 17.06.2019. The petitioner has also not asked for personal hearing. Therefore, there is no merit in the Writ Petition.

5.It is therefore open for the petitioner to file a statutory appeal before the appellate authority. The impugned order is dated 26.08.2019. The Writ Petiton has been filed on 19.03.2021. There are no reasons given in the affidavit for the delay.

6.Considering the fact that the petitioner may have a case on merits, I am inclined to dismiss this Writ Petition, by giving a liberty to the petitioner to file a staturoty appeal before the appellate authority within a period of 30 days from the date of receipt of a copy of this order. In case, such appeal is filed by the petitioner before the appellate authority, the appellate authority shall entertain and dispose of the same in accordance with law.

7.This Writ Petition stands dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

smn

Note:- Registry is directed to return the certified copy of the impugned order filed along with this writ petition to the learned counsel for the petitioner, after getting attesting copies of the same, so as to enable the petitioner to file a statutory appeal.

To

1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Buildings,
Reserve Line, Palayamkottai,
Tirunelveli.

2.The State Tax Officer,
Commercial Taxes Building,
Tiruchendur.

+1 CC to M/s.K.SRINIVASAN, Advocate (SR-14188[F] dated 24/03/2022)

+1 CC to M/s.SPL GP (SR-14920[F] & SR-17952[F] dated 28/03/2022)

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24.03.2022

MGJ(05.04.2022) 3P 5C