BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.09.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P.(MD)No.22031 of 2022
and
W.M.P.(MD)No.16188 of 2022

Madhu Shini Lodge,
Represented by its Proprietor N.Ramasamy,
S/o.Nallama Reddiyar,
No.132, Madurai Road,
Virudhunagar – 625 001. ... Petitioner

Vs.

The State Tax Officer – 1,
Commercial Taxes Department,
Virudhunagar. ... Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned order passed by the Respondent in Assessment No.33405721756/2017-18, dated 07.03.2022 and quash the same.

For Petitioner	:	Mr.R.Venkataraman Senior Counsel for Mr.Lakshmi Sriram
For Respondent	:	Mr.P.Subbaraj Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the order of assessment dated 07.03.2022, passed by the Respondent in TIN No.33405721756/2017-18 on the limited ground that the Petitioner, in response to the notice dated 23.12.2021, submitted their objection / reply on 02.03.2022, wherein, it was stated that the Tamil Nadu Government had introduced G.O.Ms.No.47/27.03.2012 with effect from 01.04.2012, whereby, an amendment was made to Entries 1 and 2 of Second Schedule to the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as 'the Act'). Subsequent to the said notification, the Entries 1 and 2 have been amended. The said amendment was challenged and the challenge was rejected upholding the vires of the said amendment by the Hon'ble Division Bench of this Court. Thereafter, it was carried by way of appeal and pending consideration before the Hon'ble Supreme Court. The outcome of the

Appeals which are pending consideration before the Hon'ble Supreme Court, in view of the Petitioner, would have direct and material bearing on the present assessment.

2. Mr.P.Subbaraj, learned Special Government Pleader, takes notice for the Respondent and submitted that adequate opportunity of personal hearing has been granted and without exercising the same, the Petitioner has directly approached this Court, which is not maintainable.

3. The learned Senior Counsel for the Petitioner submitted that no personal hearing was afforded to the Petitioner before passing the impugned assessment order. The learned Senior Counsel brought to the notice of this Court that in view of the pendency of the Special Leave Petitions challenging the validity of the amendment made by the Government of Tamil Nadu, the Respondent ought not to have proceed further until the matter gets resolved by the Hon'ble Supreme Court. In any view, the Petitioner was not granted any opportunity to put forth their submission on merits. It was submitted that under similar circumstances, this Court was

pleased to direct the Assessing Officer to revoke the assessment after granting an opportunity to the Petitioner to put forth their submission on merits. In this regard, he relied on the order dated 26.03.2019 passed by this Court in W.P.(MD)No.22429 of 2016 and the relevant portion is extracted hereunder:

> *"6. According to the learned counsel for the petitioner, no personal hearing was afforded to the petitioner before passing the impugned assessment order. Further, it is his case that no adequate explanation was submitted by the petitioner in his reply dated 06.5.2015 to the pre revision notice dated 22.04.2015 on merits, but he just informed the respondent that in view of the pendency of the Special Leave Petitions challenging the validity of the amendment made by the Government of Tamil Nadu, the respondent should not proceed with the revision of assessment proceedings. Therefore, according to the learned counsel for the petitioner, the respondent has violated the principles of natural justice by not affording adequate opportunity to the petitioner available to him under law.*
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> *7. Per contra, the learned Government Advocate would submit that there is an alternate efficacious remedy available to the petitioner under Section 51 of TN VAT Act*

and without exercising the same, the petitioner has directly approached this Court , which is not maintainable.

8. As seen from the impugned assessment order, the petitioner has not been afforded the right of personal hearing by the respondent. Further, on merits no explanation was given by the petitioner in his reply dated 06.05.2015 to the pre revision notice dated 22.04.2015, but he has simply stated that in view of the pendency of Special Leave Petitions before the Supreme Court challenging the amendment made by the Government of Tamil Nadu, based on which the proposal for revision of assessment has been made, he has not given any explanation on merits. Therefore, as rightly contended by the learned counsel for the petitioner the respondent has violated the principles of natural justice by not affording adequate opportunity to the petitioner and by granting him the right of personal hearing as well as permitting him to raise all his objections available to him under law for the proposed revision of assessment.

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11. In the result, the impugned assessment order dated.09.11.2016 passed by respondent against the petitioner is hereby quashed and matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders in accordance with law after giving *adequate opportunity to the petitioner, to raise all objections available to him under law and the respondent shall pass final orders within a period of eight weeks from the date of receipt of a copy of this order."*

4. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

5. Following the above order of this Court which applies to the facts of the case, the impugned assessment order dated 07.03.2022 passed by the Respondent is hereby quashed and the matter is remanded back to the Respondent for fresh consideration. The Respondent shall pass final orders in accordance with law after granting reasonable opportunity of personal hearing to the Petitioner. It is also open to the Petitioner to raise all objections available to him under law and the Respondent shall pass final order within a period of three weeks from the date of receipt of a copy of this order.

6. With the above direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

21.09.2022
(4/6)

Index : Yes / No
Speaking Order : Yes / No

vji

To

1. The State Tax Officer – 1,
   Commercial Taxes Department,
   Virudhunagar.

2. The Proprietor,
   Madhu Shini Lodge,
   No.132, Madurai Road,
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MOHAMMED SHAFFIQ, J.

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