BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.11216 of 2021
and
W.M.P(MD).No.8763 of 2021

Tvl.National Construction,
Contractor/Represented by Partner,
S.Balamurugan,
S/o.Subramanian,
No.3, Bose Road,
Sivagangai-630 561. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Assistant Commissioner (CT),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai-630 561. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN: 33565401956/2011-2012, dated 21.04.2017 and quash the same.

For Petitioner : Mr.Raja.karthikeyan
For Respondents : Mr.T.Amjad Khan
Government Advocate

ORDER

This writ petition is filed challenging the order, dated 21.04.2017 on the premise that even the pre-assessment notice has not been served on the Petitioner although the assessment order proceeds on the basis that notice has been issued on 29.06.2015 inviting their objections, if any and the Petitioner had not responded to the said notice.

2. It is submitted by the learned Government Advocate for the Respondents that notice has been issued. However, the notices referred to in the counter filed by the Respondents are all subsequent to the order of the assessment, dated 21.04.2017. It appears that the assessment order has been made without putting the Petitioner on notice. However, the Petitioner had filed the writ petition almost after three years from the date of assessment order. There are doubts about the service of notices as there is no material to demonstrate that notices were in fact served on the Petitioner, in the manner required.

3. It was submitted by the learned counsel for the Petitioner that they may be granted one final opportunity. The learned Government Advocate for the Respondents would submit that the Petitioner may be put on terms.

4. Considering the facts and submission of both sides, this Court is of the view that there appears to be lapses on both sides. In view of the same, the impugned order, dated 21.04.2017 is set aside and matter is remitted back to the 2nd Respondent subject to the conditions that the Petitioner would pay 40% of the taxes demanded in terms of the order of the assessment, dated 21.04.2017, which was consented to by both sides, on complying with the above condition, the Assessing Officer shall re-do the assessment after putting the Petitioner on notice and affording a reasonable opportunity. If the Petitioner fails to comply with the above condition, it is open to the respondents to proceed in accordance with law. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index : Yes / No
Internet : Yes/ No
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To

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No.3, Oversupillai Street,
Sivagangai-630 561.

MOHAMMED SHAFFIQ, J.

sn

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