BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.13426 of 2022
and
W.M.P(MD)Nos.9533 and 9534 of 2022

M/s.Susee Automobiles Private Limited,
Represented by its Director,
H-4, Sidco Industrial Estate,
(Now at 25, Tamil Sangam Road)
Madurai-625 001,
Madurai District. ... Petitioner

Vs.

The State Tax Officer,
Thirupparankundran Assessment Circle,
Madurai-20,
Madurai District. ...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records of the Respondent in his impugned proceedings made in TIN: 33143521454/2009-2010, dated 25.04.2022 quash the same in so far as it seeks to levy tax without affording an opportunity of personal hearing as directed by this Court vide order in W.P(MD)No.16607 of 2021, dated 15.09.2021.

For Petitioner : Mr.S.Rajasekar
For Respondent : Mr.M.Ramesh
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order of the assessment, dated 25.04.2022 for the assessment year 2009-2010 on the premise that petitioner's reply was not considered.

2. This is second round of litigation. In the earlier round of litigation, the very same Petitioner filed writ petition in W.P.(MD)No.16607 of 2021 for the same assessment year. This Court was pleased to issue the following direction:

> *20. In view of the afore-stated facts and circumstances and the discussions hereinabove made, this Court is inclined to dispose of these writ petitions with the following order:*
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> > *"that the impugned orders in these writ petitions are quashed. The matters are remitted back to the respondent for reconsideration. During the reconsideration process, the Petitioner shall file one more set of reply, dated 22.02.2019 and 28.02.2019, respectively, with number of documents annexed therein, running about 380 pages, within a period of two (2) weeks, from the date of receipt of a copy of this order. It is open to the respondents to pass final order, of course, after giving a chance of personal hearing to the petitioner, for which a separate communication can be sent by the respondents to the petitioner."*

A reading of the above make it clear that chance of personal hearing to the Petitioner ought to be granted and separate communication to be sent.

3. Pursuant to the above order, the Petitioner had submitted his objections on 27.09.2021, which was containing 380 pages. Thereafter, a pre-revision notice was issued on 31.03.2022. The Assessing Officer even at the time of issuing the pre-revision notice had stated that personal hearing is not necessary as could be seen from the following extract:

> *"As per the directions of the High Court the dealer filed returns along with Ledger Copies by Postal Authority, received from the Department. Therefore, Personal Hearing is not necessary."*

4. It is clearly contrary to the above directions of this Court in W.P.(MD)No.16607 of 2021. Thereafter, the Respondents has proceeded to confirm his proposal on the premise that the Petitioner has not filed any reply, which is contrary to the material on record inasmuch as the Petitioner had submitted his reply, dated 27.09.2021, which is also recorded by the Respondents while issuing pre-revision notice, dated 31.03.2022. In any view, the failure to grant personal hearing, despite the specific direction as given by this Court would vitiate the impugned proceedings.

5. In view of the same, the impugned order, dated 25.04.2022 is set aside. This would not preclude the Respondents from issuing fresh notice and re-doing the assessment after granting a reasonable opportunity to the Petitioner. The writ petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

25.11.2022

Index : Yes / No
Internet : Yes/ No
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To

The State Tax Officer,
Thirupparankundran Assessment Circle,
Madurai-20,
Madurai District.

MOHAMMED SHAFFIQ, J.

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W.P(MD).No.13426 of 2022

25.11.2022