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W.P.No.11529 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.04.2023

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.11529 of 2023

And

W.M.P.Nos.11422 to 11424 of 2023

Sundaresan Suresh Kumar

... Petitioner

Vs.

1.Assessment Unit,
Income Tax Department,
Ministry of Finance.

2.Assistant Commissioner of Income Tax,
Circle 1, II nd Floor,
Cuddalore – Income Tax Office,
Soorappa Naicken Chavadi,
Cuddalore – 607 002.

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the first respondent herein in Impugned Order No.DIN: ITBA/AST/S/147/2022-23/1051692677(1) dated 30.03.2023 relating to the Assessment Year 2018-19 and quash the same and consequently direct the first respondent to re-do the Assessment afresh after giving opportunity to the petitioner.



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For Petitioner : M/s.G.Vardini Karthik
For Respondents : Ms.S.Premalatha
SC (IT) Cases
for Mr.R.S.Balaji
SSC

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Certiorarified Mandamus to call for the records of the first respondent in Impugned Order No.DIN: ITBA/AST/S/147/ 2022-23/1051692677(1) dated 30.03.2023 relating to the Assessment Year 2018-19 and quash the same and to consequently direct the first respondent to re-do the Assessment afresh after giving opportunity to the petitioner.

2.The case of the petitioner is that the petitioner is an assessee under the respondents. The petitioner was issued with first show cause notice on 06.03.2023 and time to file reply was given till 09.03.2023 and the petitioner filed a reply on 09.03.2023 enclosing the bank statements and details of sales of cars. The petitioner again filed reply on 25.03.2023 at 10.45a.m. seeking time to file the copy of purchase and sales bills and for filing the PAN details of the dealers to whom the goods were sold. Inspite of giving the above details and



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seeking time to produce and upload the voluminous records, the petitioner was issued with the second show cause notice proposing to assess the variation on 27.03.2023 at 19.10.33 p.m. and the petitioner was given only 13 hours time till 9.00 a.m. on 28.03.2023. The adjournment application submitted by the petitioner on 25.03.2023 in the portal was rejected on the ground that time for completion of assessment is barred on 31.03.2023. Despite all the above, the impugned order was passed. Hence, this writ petition.

3.The learned counsel appearing for the petitioner submitted that the petitioner has filed this writ petition only for the limited point that the respondents did not provide opportunity to the petitioner to enable the petitioner to file detailed explanation. The second show cause notice proposing to assess the variation was issued to the petitioner on 27.03.2023 at 19.10.33 p.m. and the petitioner was given only 13 hours time to reply i.e., till 9.00 a.m. on 28.03.2023, which is clear violation of principles of natural justice since during the night hours, the petitioner will not be in a position to give reply. Hence, this Court may set aside the impugned order and remand the matter back to the respondents for fresh consideration.



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4.The facts in the present case is not in dispute. Admittedly, the second show cause notice was issued to the petitioner on 27.03.2023 at 19.10.33 p.m. and the petitioner was given time to reply till 9.00a.m. on 28.03.2023, which is clear violation of principles of natural justice.

5.In view of the above, the impugned order passed by the first respondent dated 30.03.2023 is set aside and the matter is remanded back to the respondents for fresh consideration. The respondents shall consider the matter afresh and after providing opportunity to the petitioner, shall pass appropriate orders, within a period of four weeks from the date of receipt of a copy of this order.

6.The writ petition is allowed on the above terms. No costs. Consequently, the connected miscellaneous petitions are closed.

18.04.2023

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Speaking Order/ Non Speaking Order
Index: Yes/ No
Internet: Yes/ No

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