BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.10.2023

CORAM

THE HON'BLE MR JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR JUSTICE V.LAKSHMINARAYANAN

W.A.(MD).No.727 of 2016
and
C.M.P.(MD).No.4643 of 2016

M/s.Jayaraj Karz,
Represented by its Partner,
P.Jeyasuresh Jayaraj. .. Appellant/Petitioner

Vs.

The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Trichy. ..Respondent/Respondent

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, to set aside the order passed in W.P.(MD).No.6519 of 2016 dated 12.04.2016 and allow the Writ Appeal.

For Appellant : Mr.R.D.Ganesan
For Respondent : Mr.T.Amjad Khan
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by ***V.LAKSHMINARAYANAN,J.***)

The present Writ Appeal has been filed challenging the order passed in W.P.(MD).No.6519 of 2016 dated 12.04.2016. The Writ Petition was filed challenging the order of the Assistant Commissioner (CT), Srirangam Assessment Circle, Trichy in TIN No.33333463198/2013-14 dated 02.03.2016.

2. According to the writ petitioner, prior to passing of the said order, he was not given a show cause notice as required under the proviso to Section 27 of the TNVAT Act, 2006.

3. A perusal of the order impugned in the Writ Petition shows that the Assessing Officer has calculated the taxable turnover on the basis of escaped assessment and he has determined the same under Section 27(1) of the Act. Prior to passing of the said order, he should have issued a show cause notice, thereby affording an opportunity to the assessee. This is a statutory mandate under the Act, i.e., while invoking Section 27(1) and (2) of the Act.

4. The learned Single Judge dismissed the Writ Petition by holding that there is an effective alternate remedy. Violation of principles of natural justice is an exception to the normal rule that a Writ Petition should not be entertained, where an effective and alternate remedy exists. In addition to violation of principles of natural justice, there is also violation of a statutory infraction.

5. We would have sent the appellant to avail the alternate remedy, if the matter had not been kept pending for merely a decade before this Court. The Writ Petition is of the year 2016 and the Writ Appeal comes up for disposal in the year 2023. Considering the time period which the matter has been pending before this Court, we feel that it might not be appropriate to direct the appellant to avail alternate remedy at this point of time. Secondly, finding violation of principles of natural justice as well as violation of statute, we set aside the impugned order passed by the respondent dated 02.03.2016 and remit the matter back to the respondent.

6. The respondent shall issue a show cause notice to the appellant in compliance with the proviso to Section 27(1) of TNVAT Act and thereafter, take a call on the same. The appellant is entitled to put forth all his defence before the respondent. The said exercise shall be completed within a period of eight (8) weeks from the date of receipt of a copy of this judgment.

7. Accordingly, the order dated 12.04.2016 passed in W.P.(MD). No.6519 of 2016 is set aside and the Writ Appeal stands allowed. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
06.10.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Lm

To

The Assistant Commissioner (CT),
Srirangam Assessment Circle,
Trichy.

<u>S.M.SUBRAMANIAM,J.</u>
<u>and</u>
<u>V.LAKSHMINARAYANAN,J.</u>

Lm

W.A.(MD).No.727 of 2016

06.10.2023