BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.6136 of 2024
and
W.M.P.(MD)No.5763 of 2024

Haja Mohideen,
Proprietor of Reema Medicals,
No.36D, Louis Street,
Water Tank Road, Nagercoil,
Kanyakumari District – 629 001. ... Petitioner

versus

The Deputy State Tax Officer,
Nagercoil – 2,
Commercial Taxes Buildings,
Mead Street,
Nagercoil – 629 001. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in GSTIN: 33AAJPH0916PIZM/2017-18 Demand Reference No.ZD331223260715M, dated 29.12.2023 and quash the same and consequently, direct the respondent to consider the reply of the petitioner dated 19.10.2023 to the show cause notice dated 22.09.2023 and grant to the petitioner an opportunity of personal hearing.

For Petitioner	:	Mr.M.Azeem
For Respondent	:	Mr.A.Baskaran, Additional Government Pleader

ORDER

For the Assessment Year 2017-2018, the respondent has conducted an enquiry and passed an order of assessment on 29.12.2023. This order is challenged in this writ petition that the reply of the petitioner was not at all considered by the respondent and the petitioner was not provided with an opportunity of personal hearing.

2. The learned counsel appearing for the petitioner submits that the petitioner has closed down the business and also shifted to another place. The personal hearing notice dated 23.11.2023 was re-sent to the new address of the petitioner and the same was received by him on 29.11.2023, the date on which, the enquiry was scheduled to be

conducted and therefore, the petitioner could not appear for the enquiry. He has also made a request to the respondent through web-portal requesting to provide him one more opportunity of personal hearing. However, the impugned order has been passed on 29.12.2023 fixing the liability as if the petitioner has not appeared and produced the relevant documents during the enquiry. He further submits that the petitioner is having an appeal remedy, however, since the enquiry has not been conducted in a proper manner without providing an opportunity of hearing, the petitioner cannot make out his case in the appeal also.

3. Mr.A.Baskaran, learned Additional Government Pleader takes notice for the respondent and submits that the show cause notice in Form ASMT was issued on 03.08.2023 and personal hearing was provided by notices dated 04.11.2023 and 23.11.2023. If the petitioner has changed his address, on this ground, it cannot be treated that he was not provided with an opportunity of hearing during the enquiry.

4. This Court considered the rival submissions made.

5. In the impugned assessment order dated 29.12.2023, it is stated as under:

> "Accordingly, a notice in DRC-01 was issued in the reference cited above, Your reply is not satisfied and not acceptable.
>
> After giving notice to them and instructing them to come and submit their documents, they have not come with the relevant documents in this office. So I am confirming and placing the order."

6. Though the petitioner has submitted a reply, the respondent has simply rejected that the petitioner's reply is not acceptable. The manner in which the assessment order has been passed, appears that the reply of the petitioner was not at all considered by the respondent. Though the petitioner was provided with an opportunity of personal hearing, he has not availed that opportunity due to change of address.

7. Therefore, in order to provide one more opportunity to the petitioner, this writ petition is allowed with a direction to the petitioner to appear before the respondent on 20.03.2024 (i.e. Wednesday) along with relevant documents, without expecting any notice from the respondent. The respondent shall consider the petitioner's documents and his reply and thereafter, pass suitable orders as expeditiously as possible. No costs. Consequently, connected miscellaneous petition is closed.

14.03.2024

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NCC : Yes / No.
Index : Yes / No.
Internet : Yes / No.

To

The Deputy State Tax Officer,
Nagercoil – 2,
Commercial Taxes Buildings,
Mead Street,
Nagercoil – 629 001.

B.PUGALENDHI, J.

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W.P.(MD)No.6136 of 2024

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