BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2024

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.(MD) No.8493 of 2024
and
W.M.P.(MD) No.7688 of 2024

M/s.Sundaram Agencies,
Rep. by its Partner S.Arul,
16/12, North Veli Street,
Kamala Thoppu Lane,
Madurai 625001. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Chennai.

2.The State Tax Officer,
Tamil Sangam Salai Assessment Circle,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India for issuance of a Writ of Certiorari calling for the records in TIN: 33684900885/2008-09 dated 05.02.2024 and consequent notices of demand in Form 'O' and Form 'RR' on the file of the second respondent and quashing the same.

For Petitioner : Mr.S.Lakshmanan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

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ORDER

In this Writ Petition, the petitioner has challenged the impugned assessment order dated 05.02.2024 passed by the second respondent in TIN:33684900885/2008-09.

2. This is the second round of litigation before this Court. Earlier, an assessment order came to be passed on 03.03.2017 for the same Assessment Year 2008-2009 which was the subject matter of challenge before this Court in W.P.(MD) No.19495 of 2017. This Writ Petition was allowed on 08.04.2019 at the time of admission after hearing the learned counsel for the petitioner and the learned Government Advocate for the respondents with the following observations:

> *6. This Court has perused and examined the impugned assessment order. The issue regarding Limitation has not been considered under the impugned Assessment order. Further, opportunity of personal hearing was not afforded to the petitioner under the impugned assessment order. It is settled law as laid down by various judicial pronouncements of this Court that personal hearing is mandatory. Further, as seen from the original assessment order dated 14.02.2011, the revision of assessment was*

proposed to be made by pre-revision notice dated 31.01.2017 and prima facie there seems to be force in the submissions made by the learned counsel for the petitioner that the revision of assessment proceedings has been initiated beyond the stipulated period as prescribed under Section 27(1)(b) of the TN VAT Act, 2006 prior to its amendment.

7. For the forgoing reasons, this Court is of the considered view that the impugned assessment order that has been passed violating the principles of natural justice by not affording an opportunity of personal hearing to the petitioner to raise all objections available to him under law in the revision of assessment proceedings. Further, the issue of Limitation will have to be considered in the light of Section 27(1)(b) of the TN VAT Act, 2006.

8. In the result, the impugned assessment order is hereby quashed and matter is remanded back to the file of the second respondent, who shall pass final orders after affording adequate opportunity to the petitioner to raise all objections available to them under law and also grant them the right of personal hearing and decide the issue of Limitation within a period of eight (08) weeks from the date for receipt of a copy of this order. With these directions, the Writ Petition is disposed of. No costs. Consequently, connected W.M.P.(MD) No.15797 of 2017 is closed.

3. After the above Writ Petition was disposed of, the petitioner was served with a notice dated 21.05.2019, to which, the petitioner has replied. Thereafter, the petitioner was issued with further notice dated 12.03.2021 fixing the date of hearing on 30.03.2021. It appears that no hearing was

held on 30.03.2021. Thereafter, another notice was issued to the petitioner on 10.10.2022. In the said notice, the date of hearing has been left blank which reads as under:

> *Please take notice that, as directed by the Hon'ble Madurai Bench of Madras High Court as per reference 2nd cited, **an opportunity of personal Hearing is now given and requested to appear before the Assessing Officer on .10.2022** with the details/ records in support of their claims without fail. If not attended / appeared within the stipulated time, orders will be passed with the records available in this office, as per the provisions of the Act and Rules.*

4. Since the petitioner failed to respond to the above notice, the impugned assessment order dated 05.02.2024 has been passed confirming the demand. It is incumbent on the part of the petitioner to respond to the notice dated 10.10.2022 and the petitioner should have informed the respondents that the date of hearing was not mentioned in the said notice. Both the petitioner and the respondents are equally at fault. However, the fact remains that the impugned order has been passed without hearing the petitioner.

5. On this ground alone, the impugned order is interfered with and is quashed. The case is remitted back to the second respondent to pass a fresh order on merits and in accordance with law. The first date of hearing before the second respondent is fixed to 24.04.2024. Thereafter, the petitioner will have to appear on the dates that may be fixed by the second respondent during the hearing. The petitioner is directed to furnish all documents that are required by the second respondent. It is expected that the final order will be passed on merits within a period of 6 months from the date of receipt of a copy of this order.

6. Accordingly, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

03.04.2024

Index: Yes/ No
Neutral Citation: Yes / No
Speaking Order / Non-Speaking Order
JEN

Copy To:
1.The Commissioner of Commercial Taxes,
Chennai.

2.The State Tax Officer,
Tamil Sangam Salai Assessment Circle,
Madurai.

C.SARAVANAN, J.

JEN

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