BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2024

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD)No.24391 of 2024
and
W.M.P(MD)Nos.20717 & 20718 of 2024

Tvl.Sai Flexi Bag Private Limited,
Represented by its Managing Director,
G.Subash. ... Petitioner

Vs.

The Commercial Tax Officer,
Nagercoil Tower Junction Circle,
Nagercoil,
Kanyakumari-629 001. ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the impugned assessment order on the file of respondent vide TIN: 33106143386/2009-10, dated 26.12.2017 and quash the same as illegal and devoid of merits and direct the respondent to re-do the assessment for the year 2009-10 afresh after providing reasonable opportunities to the company and pass such further or other orders as this Court.

For Petitioner : Mr.Raja.Karthikeyan

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

ORDER

The present writ petition has been filed challenging the impugned order passed by the respondent vide TIN:33106143386/2009-10, dated 26.12.2017 on the premise that neither the notice nor the impugned order of assessment were served on the petitioner or its authorised representative and that they became aware of the impugned order of assessment only when the Tax Recovery Inspector intimated the petitioner.

2. It is submitted by the learned Counsel for the petitioner that it was only after the Recovery Inspector informed the petitioner about the tax dues in terms of the orders of assessment that the petitioner approached the respondent authority and obtained the xerox copy and on the basis of such xerox copy, the present writ petition has been filed.

3. It is further submitted by the learned Counsel for the petitioner that the petitioner's factory premises was under lock and seal by the revenue and police authorities and resultantly, the petitioner was unable to participate in the assessment proceedings inasmuch as neither any notices nor the impugned order of assessment were served to the petitioner.

4. To the contrary, the learned Additional Government Pleader for the respondent would submit that the present writ petition ought not to be entertained in view of laches, in any view it was submitted that the impugned order of assessment is one that is appealable.

5. Having considered both sides, this Court is not inclined to enterain the present writ petition for whether there was a valid service and when the service was effected on the petitioner or its authorised representative is essentially a question of fact and in dispute. Examination of disputed questions of fact are alien to jurisdiction under Article 226 of the Constitution of India. At this juncture, the learned Counsel for the petitioner would submit that they may be granted liberty to file an appeal.

6. Without expressing anything on merits or on the issue of limitation, this Court would only direct that if any appeal is filed, the issue of limitation and the service of notice / order of assessment may be examined by the Appellate Authority as a preliminary issue.

7. This writ petition stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

17.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
BTR

To

The Commercial Tax Officer,
Nagercoil Tower Junction Circle,
Nagercoil,
Kanyakumari-629 001.

MOHAMMED SHAFFIQ, J.

BTR

W.P(MD)No.24391 of 2024

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