IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.NO.4102 OF 2015
AND M.P.NOS.1 and 2 OF 2015

Tvl.Tar Makers
represented by its Partner
Thiru.K.Nakiran,
No.64/2, 2, Thailapuram Main Road,
Vanur Taluk, Kuliyur Post,
Villupuram District. ... Petitioner

Vs.

The Commercial Tax Officer (Main),
136, 137, Nehru Street, (State Bank upstair)
Tindivanam. ... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India seeking for the relief of issuance of a writ of Certiorari to call for the records in respect of impugned Assessment Order TIN: 33714722340/ 2009-10 dated 02.01.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006, quash the same.

For Petitioner in : Mr.S.P.Asokan

For Respondent : Mr.Kanmani Annamalai,
Addl.Govt.Pleader (Taxes)

ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader (Taxes) for the respondent.

2. The petitioner has come forward with this writ petition challenging the order of the assessment dated 2.1.2015 passed by the respondent.

3. Before going into the facts in detail, I feel it necessary to extract below Section 22(4) and Section 81 of the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "2006 Act"):-

"Section 22. Procedure to be followed by Assessing

Authority:...

(1)....

(4) If no return is submitted by the dealer for that year, the assessing authority, shall, after making such enquiry as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed:

Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard.

Section 81: Power to summon witnesses and production of documents:-

''(1) An assessing authority, or an appellate or revising authority including the Appellate Tribunal or any officer of the Commercial Taxes Department below the rank of an Assistant Commercial Tax Officer shall, for the purpose of this Act, have all the powers conferred on a Court by the Code of Civil Procedure, 1908 (Central Act V of 1908), for the purpose of -

(a) summoning and enforcing the attendance of any person and examining him on oath or affirmation ; and

(b) compelling the production of any document.

(2) Without prejudiced to the provisions of any other law for the time being in force, where a person to whom a summon is issued either to attend to give evidence, or produce account, registers, records or other documents at a certain place and time intentionally omits or fails to attend or produce accounts, registers, records or other documents at such place or time, the authority or officer mentioned in sub-section (1) may, after giving the person concerned a reasonable opportunity of being heard, impose upon him by way of penalty a sum not exceeding rupees five hundred.

(3) Any officer of the Commercial Taxes Department, not below the rank of an Assistant Commercial Tax Officer shall have powers to call for such information, particulars or records as he may require from any person for the purpose of assessment, levy and collection of tax under this Act".

4. According to Section 21 of 2006 Act, every dealer registered under the Act shall have to file return, in the prescribed form showing the total and taxable turnover within the prescribed period in the prescribed manner, along with proof of payment of tax. Since, according to the respondent, the petitioner has contravened the said

provision, they assessed them as provided under Section 22(4) of the Act. The petitioner has submitted that on receipt of the notice dated 28.8.2014 issued by the respondent alleging that he came to know from the Departmental Website that the petitioners had purchased goods from certain registere4d dealers in the State to an extent of Rs.70,83,117/- used them in the works-contract executed by them but omitted to pay tax in respect of those works-contracts, the petitioner responded by letter dated 6.11.2014 to supply the copies of invoices of sales alleged to have been made and afford an opportunity to cross-examine the sellers, who allegedly sold goods to the petitioner. However, the respondent passed the impugned order dated 2.1.2015 stating that the notice was issued to the petitioner on the basis of Department website details gathered from the sellers Annexure-II only.

5. However, in the impugned order, apart from the reason stated above, the respondent has stated that the petitioner ought to have filed monthly returns in Form I under Section 21 of TN VAT Act, 2006 read with Rule 7 of TN VAT Rules, 2007 along with proof of payment of tax and the petitioner would have purchased goods from unregistered sources and consumed in the contract works and hence the deemed sale value was estimated by adding at 33% on the purchases of goods liable to tax at 4% and 12.5% and proposed for assessment accordingly. However, the petitioner has wilfully not filed the monthly returns with an intention to evade the payment of taxes and as such it was proposed to levy penalty at 150% of the tax due proposed on the actual sales omission under Section 22(5) of the Act. It was further stated in the assessment order that the petitioner has not filed even the annual return in form I-1 even along with the reply to the notice and the petitioner has no purchases bill or the details of purchase. Accordingly the total and taxable turnover proposed in the notice was determined by the respondent at the best of judgment for the year 2009-10 under Section 22(4) of the Act besides levying the penalty under Section 22(5) of the Act.

6. That apart, when a specific request has been made by the petitioner, more particularly, when the respondent - assessing officer proceeded against the petitioner under Section 22 of 2006 Act, in terms of 22(4) of the said Act, an enquiry or personal hearing is a must and that the petitioner would be entitled to cross examine the persons as in terms of Section 81 of 2006 Act, which is extracted supra.

7. Prior to the introduction of the Act 2006 with effect from 2007, this Court had considered a similar issue with regard to Tamil Nadu General Sales Tax Act in the case of T.M.RAJAGANAPATHI TRADERS VS. COMMERCIAL TAX OFFICER, SALEM reported in 142 STC 130. Section 54 of the Tamil Nadu General Sales Tax Act is pari materia to Section

81 of 2006 Act. This Court in the above cited decision has held that aggrieved person is entitle to cross-examine and that the authority concerned shall issue summons in terms of the provisions of the said Act.

8. Similarly as per Section 81 of the 2006 Act, the respondent is empowered to issue summons to the persons and give an opportunity to the dealer to cross examine them, without which there would be no scope for the authority concerned to rely on the materials for determination of tax liability of the dealer.

9. In view of the above, while setting aside the order impugned in this writ petition, I direct the respondent to comply with Section 81 of the 2006 Act in its letter and spirit and before passing final order afresh on merits, an opportunity of hearing is mandatory besides asking the petitioner to file objections, if any. The respondent shall pass final orders within a period of four months from the date of receipt of a copy of this order. It is made clear that the respondent shall conduct proceedings on a day to day basis if it is required.

The writ petition is disposed of on the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

USK

To

The Commercial Tax Officer (Main),
136, 137, Nehru Street, (State Bank upstair)
Tindivanam.

+1cc to the Special Government Pleader, S.R.No.9089

W.P.NO.4102 OF 2015

VGI(CO)
CA(05/03/2015)