IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:21.10.2016

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P. No.35369 of 2016 &
W.M.P.Nos.30457 & 30458 of 2016

Tvl.K.S.Speciality Fats Pvt. Limited
rep. by its Director L.Ashok Kumar .. Petitioner

Vs

1.The Assistant Commissioner (CT)
Manali Assessment Circle
Chennai.

2.The Commercial Tax Officer
Manali Assessment Circle
Chennai .. Respondents

Prayer :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records relating to the proceedings of the 2nd respondent in TIN 33171085331/2013-14 dated 11.07-2016, and quash the same.

For petitioner .. Mr.S.Raveekumar

For Respondents .. Mr.K.Venkatesh
Government Advocate

O R D E R

Heard Mr.S.Raveekumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate appearing for respondents and with the consent of the learned counsel for the petitioner, the Writ Petition is taken up for disposal.



2.The petitioner is a manufacturer and trader of refined oil and registered on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 [TNVAT Act]. The order impugned in this Writ Petition is an order of assessment dated 11.7.2016, under the provisions of the TNVAT Act for the year 2013-14.

3.It may not be necessary to go into the factual aspects, based on which the impugned assessment order has been passed, since the impugned order has been challenged primarily on the ground that it is in violation of principles of natural justice. The petitioner's case is that no pre-revision notice was issued to them prior to passing the impugned order dated 11.7.2016. The notice referred to in the said order dated 21.7.2015, was never issued to the petitioner or received by the petitioner. The first respondent had issued a notice dated 22.8.2016, which was dispatched belatedly and received by the petitioner on 6.9.2016. In the said notice issued by the first respondent, which is also for the very same assessment order, the petitioner has been granted fifteen days time to submit their objections, however, even before that second respondent has passed the impugned order dated 11.7.2016, received by the petitioner on 06.9.2016.

4.Though the second respondent has filed a counter affidavit, it may not be necessary to refer to all the averments and suffice to note paragraph Nos. 6 & 8 of the counter, which pertains to the contention as to whether notice was served on the petitioner before the passing the impugned order.

5.The respondent seeks to take umbrage under the notice issued by the first respondent dated 22.8.2016 and to state that the petitioner was given opportunity. Unfortunately, the second respondent failed to note that the impugned order of assessment is dated 11.7.2016 and therefore, the notice issued by the first respondent dated 22.8.2016, could have no bearing on the impugned assessment. That apart, even assuming that notice was issued by the first respondent on 22.8.2016, the same was received by the petitioner only on 6.9.2016. However, even prior to that the impugned order of assessment has been passed on 11.7.2016, despatched belatedly and received by the petitioner on 6.9.2016. Thus, it is evidently clear that there is total violation of principles of natural justice and the second respondent has clearly abdicated his duties as an Assessing Officer.

6.One more issue that has to be pointed out is that while completing the assessment, the second respondent stated that he is revising the assessment under section 84 of the TNVAT Act. That was also a mistake committed by the second respondent, since the power under section 84 of the TNVAT Act, can be exercised by the Assessing Officer only after the assessment proceedings has been completed and not while revising the assessment under section 27 of the TNVAT Act.

7.This is sought to explained as a misquoting of the provisons of law. The said stand taken by the respondents in their counter affidavit does not merit acceptance, because the

Assessing Officer has to be well aware of the fact that under the provisions of law, he is exercising his jurisdiction, when admittedly he has not passed the order of assessment and there is no Petition under section 84 of the TNVAT ACT, filed by the dealer or there is no exercise of suo motu power by the second respondent, reference to section 84 of the Act is wholly unsustainable. Hence, for all the above reasons, this Court is convinced that the impugned order has been passed in utter disregard to the principles of natural justice and therefore calls for interference.

8.Accordingly, the Writ Petition is allowed and the impugned order is quashed and the second respondent is directed to issue fresh notice, giving full particulars and affording an opportunity of fifteen days, to submit their objections and after the objections are received, the second respondent shall afford an opportunity of personal hearing and redo the assessment in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

rpa
To

1.The Assistant Commissioner (CT)
Manali Assessment Circle , Chennai.

2.The Commercial Tax Officer
Manali Assessment Circle
Chennai

1 cc to M/s.S. Raveekumar, Advocate, Sr. 60036
1 cc to Special Government Pleader (Taxes), Sr. 60553

W.P. No.35369 of 2016



VD (CO)
kk 12/11