BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.09.2016

CORAM:

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**
**and**
**THE HONOURABLE MS.JUSTICE V.M.VELUMANI**

W.A.(MD) No. 1323 of 2016
and
C.M.P.(MD).No.9398 of 2016

Tvl.Anthony & Co.,
rep.by its Prop P.Ramasamy,
No.132, Pappiah Building,
Sankarankovil Road
Kalugumalai 628 552,
Tuticorin District ... Appellant/Petitioner

*Vs*

1.The State of Tamil Nadu,
rep.by its Secretary to Government,
Department of Commercial Taxes & Registration,
Fort.St.Geroge,
Chennai-600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam,
Chepauk, Chennai-600 005.

3.The Commercial Tax Officer(Main),
Kovilpatti II, Tuticorin District.

... Respondents /Respondents

Writ Appeal is filed under Clause 15 of Letters Patent against the order dated 15.07.2016 made in W.P.(MD).No.12404 of 2016.

Prayer in WP(MD)No.12404/2016:- Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus to call for the records relating to the order of the 3rd Respondent in his proceedings in TIN No.33675942525/2012-13 dt 30.03.2016 (received by the Petitioner on 09.05.2016) and the Form- U issued to the bankers on 27.06.2016 and quash the same and to direct the 3rd Respondent to accord an opportunity of personal hearing and pass fresh order for the assessment year 2012-2013 under the TN VAT ACT .

For Appellant :Mr.M.MD.Ibrahim Ali
For Respondents :Mr.R.Karthikeyan
Additional Government Pleader
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JUDGMENT

[Judgment of the Court was delivered by

M.SATHYANARAYANAN, J.]

By consent, this Writ Appeal is taken up for final disposal.

2. The appellant is the proprietary concern and it is registered under the provisions of the Tamil Nadu Value Added Tax as well as Central Sales Act. ( in short 'TANVAT'). The appellant is a dealer in fertilizer and cement bearing TIN No.33675942525 and CST R.C.No. 480862, respectively. The appellant would state that he was firstly assessed for the assessment year 2012-2013 by the third respondent herein under Section 22 of the Act and thereafter, he was issued with a notice dated 13.10.2015 proposing to revise the ITC claim and penalty under Section 27 of the TANVAT Act. On receipt of the notice, the appellant submitted his response on 19.10.2015 to the third respondent in person informing that he has already paid the tax along with the returns. The appellant would further state though it is alleged that as per Annexure II, no sale was made by the appellant, it is the specific claim of the appellant that he is having original bills to prove that the seller has made sales to the appellant and the tax has been paid by cheque and also all the purchase has been made from the M/s.India Cements Ltd.

3. The grievance expressed by the appellant is that no personal hearing was afforded to the appellant to put forth his case in person, but, to his shock and surprise, he was issued with the assessment order dated 30.03.2016 by the third respondent raising a demand of Rs.1,70,048/- and further stating that no reply has been filed by the appellant. Thereafter, the third respondent issued Form-U Notice to the bankers on 27.06.2016. Challenging the legality of the said proceedings, the appellant preferred W.P.(MD).No.12404 of 2016.

4. Notice was accepted by Mr.R.Karthikeyan, learned Additional Government Pleader for the respondents. The learned Judge, after going thorough the papers and upon hearing the submissions observed that though the appellant claims to have filed a reply in person, it cannot be believed for the reason that the appellant being a business man cannot take such a stand and therefore, dismissed the Writ Petition, after granting liberty to

the appellant to work out his remedy before the appellate authority, within the stipulated time, in accordance with law. Aggrieved by the dismissal, the appellant has preferred the present Writ Appeal.



4. learned Counsel for the appellant has drawn the attention of this Court to Circular No.7/2014, BB1/3589/2014, dated 03.02.2014, issued by the Office of the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai and would submit that for revision of assessment, the following guidelines have to be followed. The relevant portion found in the said circular is usefully extracted below:-

> "b) Revision of Assessment
>
> Under the TNVAT Act,2006, the assessing officers usually issue orders to reverse the ITC on obvious reasons. During the current financial year, the assessing officer may issue notice to reverse the ITC for each month separately under Section 25 of the TNVAT Act,2006. After closure of the financial year, the assessment should be completed initially under Deemed Assessment under Section 22 of the Act and then only they should take revision proceedings under Section 27 of the Act. Before passing revision order, the dealer should be given reasonable opportunity and personal hearing if required so as per Section 22(4) of the TNVAT Act, 2006. No order of revision should be made without affording an opportunity to the dealer as provided under Sections 22,25,27 of the Act."

5. It is the categorical stand of the appellant that he is having all the materials to show that the seller has made sales to the petitioner and tax has been paid by cheque. The said purchase has been made from M/s.Indian Cements Ltd. Therefore, the impugned order is unsustainable and prays for one more opportunity in the form of remand to sustain his plea.

6. *Per contra,* learned Additional Government Pleader would vehemently contend that despite his personal hearing afforded to the appellant, he was not responded to the same and the assessing authority/the third respondent after careful scrutiny of the entire materials has raised the demand as early as 27.06.2016 and the appllenat has belatedly made a challenge, without availing the alternative remedy and the learned Judge has taken note of the said facts and circumstances and dismissed the Writ Petition and he prays for the Writ Appeal too.

7. This Court has carefully considered the materials and also perused the materials available on record.



8. It is the specific submission of the appellant, as per paragraph No.4 of the affidavit filed in support of the Writ Petition, that as against the notice dated 13.10.2015 issued by

the third respondent, the appellant submitted his response on 19.10.2015 in person and informed the third respondent that he had already paid the tax along with the returns. However, it is the stand of the respondents that despite being afforded opportunity, the appellant did not avail of the same. In this connection, it is pertinent to point out that as per the Circular cited supra, as regards the revision of assessment before passing the revision order, the dealer should be given reasonable opportunity, if required so and no order of revision should be made without affording an opportunity to the dealer as provided under Sections 22,25,27 of the Act. In the light of the defence taken by the appellant and also the Circular cited supra, this Court is of the considered view that the appellant should be afforded to one more opportunity to sustain his plea as to the payment of tax along with the returns.

9. In the result, this Writ Appeal is allowed and the impugned order passed in W.P.(MD).No.12404 of 2016 dated 15.07.2016 as well as proceedings of the third respondent dated 30.03.2016 in the form of Form-U Notice to the bankers on 27.06.2016 are set aside and the matter is remanded back to the third respondent, who shall fix the date of hearing and intimate the same to the appellant. It is open to the appellant to avail the said opportunity before the third respondent, in the manner known to law. The third respondent is directed to complete the said exercise and pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub-Assistant Registrar

To:
1.The Secretary to Government,
The State of Tamil Nadu,
Department of Commercial Taxes & Registration,
Fort.St.Geroge, Chennai-600 009.
2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai-600 005.
3.The Commercial Tax Officer(Main),
Kovilpatti II, Tuticorin District
+One cc to Mr.Mohammed Ibrahim Ali, Advocate, SR.No.57242
ssm
RL/5C/4P/AAL/MPA/6.10.2016 W.A(MD).No.1323 of 2016



29.09.2016