BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.A(MD)No.1444 of 2016
and
C.M.P.(MD) No.10977 of 2016

Tvl.Malliga Traders,
Represented by its Proprietorix Tmt.P.Malliga,
524, KVS Complex,
Sattur,
Virudhunagar District. ... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes and Registration,
Fort St. George,
Chennai - 600 009.
2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.
3.The Commercial Tax Officer (Addl),
Sattur,
Virudhunagar District. ... Respondents/Respondents

PRAYER: The Writ Appeals are filed under Clause 15 of the Letters Patent against the order dated 16.08.2016 made in W.P.(MD) No.14971 of 2016.

Prayer in WP(MD). 14971/ 2016 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records relating to the revision of Assessment orders passed by the 3rd respondent in TIN No.33935780683/2014-15 dt.15.06.2016 (received by the Petitioner on 22.06.2016) and quash the same and to direct the 3rd respondent to afford an opportunity of personal hearing and pass fresh orders for the assessment year 2014-2015.

For Appellant :Mr.M.MD.Ibrahim Ali

For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

J U D G M E N T

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

By consent, this Writ Appeal is taken up for final disposal. Mr.R.Karthikeyan, learned Additional Government Pleader accepts notice on behalf of the respondents.

2.The appellant is the Proprietorix of M/s.Malliga Traders, carrying on business at 524, KVS Complex, Sattur, Virudhunagar District and she is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 (In short TNVAT) and an assessee in the books of the 3rd respondent and she has been assigned TIN No.33935780683. The appellant is carrying on trade in Match Raw Materials for the purpose of preparing match raw materials. The appellant would state that she has purchased match raw materials from the TNVAT suffered sources and submitted the monthly returns to the 3rd respondent as per the provisions laid down under Rule 7(1)(a) of the TN VAT Act and the Rules framed thereunder. The appellant's turnover for the Assessment Year 2014-15 is Rs.1,68,000/-, for which she has also paid the tax of Rs.3,000/-. The appellant/writ appellant has received the notice dated 23.05.2016 from the 3rd respondent on 24.05.2016 and the contends of the same would disclose that the various selling dealers have issued sales invoice in the name of the appellant for the turnover of Rs.10,44,500/-. The appellant on receipt of notice could not respond for the reason, she had fallen sick from 23.05.2016 to 08.08.2016 due to disc prolapse. The 3rd respondent passed the Assessment proceedings dated 15.06.2016, which was received by the appellant/writ petitioner on 22.06.2015. The appellant aggrieved by the non-following of the procedures as contemplated under 22(4) of the Act by not affording opportunity of personal hearing has came forward to file the writ petition. The learned Judge on putting Mr.R.Karthikeyan, the learned Additional Government Pleader on notice and upon hearing rival submissions held that despite opportunities being given, the appellant did not avail the same and since no objection/reply has been submitted by the appellant, the third respondent was left with no option except to pass the impugned order and also held that the appellant is having alternative remedy and thus dismissed the writ petition, giving liberty to the appellant to file appeal before the appropriate forum. The writ petitioner/Assessee, aggrieved by the dismissal of the Writ Petition, filed this Writ Appeal.

3.Mr.M.Md.Ibrahim Ali, learned counsel appearing for the appellant/writ petitioner would submit that in similar facts and circumstances, this Court by order dated 29.09.2016 in W.A.(MD) No.1323 of 2016 has set aside the order and remanded the matter, so as to enable the 3rd respondent to follow the procedures contemplated under Section 22(4) of TNVAT Act by giving personal hearing and prayed that similar order may be passed in this Writ Appeal.

4.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that after receipt of the notice the appellant has not sent any reply and after following the due process as contemplated under law the impugned proceedings came to be issued and the learned Judge also found that appellant is having alternative remedy and therefore rightly dismissed the Writ Petition and prayed for dismissal of the Writ Appeal.

5.This Court paid its best attention to the rival submissions and perused the records including the Circular No.7/2014, BBL/3589/2014, dated 03.02.2014, issued by the Office of the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai, carefully.

6.It is relevant to extract the relevant portion of Circular No.7/2014, BBL/3589/2014, dated 03.02.2014, issued by the Office of the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai:

> "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."

7.The appellant has pleaded that the reason for not giving any response to the notice is that she was suffering due to disk prolapse for the period between 23.05.2016 to 08.08.2016 and the medical certificate to that effect came to be issued on 09.08.2016. However, the said reason does not find a place in the writ petition and merely stated that appellant had fallen sick during that period. On the merits of the case, the petitioner also took the stand that before proceeding to make a revision of Assessment based on the departmental Web site i.e., copies of the documents have to be furnished and admittedly copies of the same have not been furnished to the petitioner.

8.A perusal of the impugned order, which was the subject matter of challenge, would disclose among other things that the mandate cast upon the circular and the above statutory provision has not been followed. Hence, on the short ground it calls interference.

11.In the result, the Writ Appeal is partly allowed and the order of this Court dated 16.08.2016, made in W.P.(MD) No.14971 of 2016 as well as the impugned assessment order in TIN 33935780683/2014-15 dated 15.06.2016, on the file of the 3rd respondent are set aside subject to condition that the appellant/writ petitioner should deposit Rs.25,000/- (Rupees Twentyfive Thousand only) before the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order, without prejudice to her rights and contentions and on receipt, the 3rd respondent is directed to consider the matter afresh in the light of the procedure contemplated under Section 22(4) of the TANVAT Act and the above circular and pass orders as expeditiously as possible within a period of 4 weeks thereafter and communicate the decision taken to the appellant/writ petitioner. Till such defer from such proceedings. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Department of Commercial Taxes and Registration,
State of Tamil Nadu, Fort St. George, Chennai - 600 009.

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

3.The Commercial Tax Officer (Addl),Sattur, Virudhunagar District.

+1 cc to M/s.Mohamed Ibrahim Ali, Advocate in SR.No.71252
+1 cc to The Special Government Pleader in SR.No.71111

W.A.(MD) No. 1444 of 2016
and C.M.P.(MD) No.10977 of 2016
21.11.2016

sj
CSL/SS-2/08.12.2016 :4P/6C