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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.1445 of 2016
and C.M.P.(MD) No.10978 of 2016
and WP(MD)No.14973 of 2016

Tvl.S.S.Plastics,
Represented by its Partner, Thiru.R.S.S.Ravi,
No.4/67, Kulloorchandai Road,
Virudhunagar District. ... Appellant/Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes Department,
Fort St. George,
Chennai - 600 009.
2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.
3.The Assistant Commissioner (C.T) - 3,
C.T. Buildings, Madurai Road,
Virudhunagar District.
4.The Commercial Tax Officer,
Sattur Road Roving Squad,
C.T. Buildings, Madurai Road,
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.14973 of 2016.

Prayer in WP(MD)No.14973/2016:- Petition is filed under Article 226 of the Constitution of India, 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 his proceedings TIN No.33055762640/2014-15 dated 28.7.2016(received by the Petitioner on 9.8.2016) 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.MD.Ibrahim Ali
For Respondents :Mr.R.Karthikeyan
Additional Government Pleader

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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 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 the appellant has been assigned TIN No.33055762649. The appellant is a partnership firm in which the deponent is a partner. The appellant is dealer in in old waste plastic materials. According to them, the appellant purchases the waste plastic materials from registered dealers within the State and from other States and submit the monthly returns in Form I to the 3rd respondent as per the provisions laid down under Rule 7(1)(a) of the Tamil Nadu Value Added Tax Act and the Rules framed thereunder. The business place of the appellant was inspected by the 4th respondent on 19.11.2015 and according to the appellant statement was obtained from them under coercion and duress. Thereafter, Pre-Assessment Notice was issued on 13.06.2016, calling upon them to show cause as to why the proposed tax and penalty under Section 27(4) of TN VAT Act, namely, Rs.1,06,177/- and Rs.1,59,266/- respectively could not be imposed. The appellant, however, for the reasons best known did not respond to the said notice. Thereafter, the 3rd respondent has passed final order dated 28.07.2016, proposing the tax of Rs.1,06,177/- and also the penalty of Rs.1,59,266/- and also issued Form 'O and Form 'RR' notice and challenging the legality of the same, the writ petition was filed. The learned Judge, after notice and upon hearing rival submissions found that the appellant/writ petitioner did not respond to the show cause notice and further found that there is an effective alternative remedy and upon citing the same, dismissed the writ petition, giving liberty to the petitioner 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 contend that the appellant firm purchased the goods within the State and from other State and also furnished all the relevant particulars in Form I to the 3rd respondent without any omission and despite the furnishing of the particulars relevant to the issue the impugned order has been issued and the same cannot be sustainable in law. The further submission of the learned counsel for the appellant/writ petitioner is that admittedly opportunity of personal hearing was not given to the appellant in terms of Section 22(4) of the TNVAT Act and on those grounds prays for interference of this Court.

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4.Per contra, learned Additional Government Pleader appearing for the respondents would submit that despite receipt of the show cause notice the appellant/writ petitioner did not offer any explanation and the learned Judge by taking note of the said fact and availability of alternative remedy, 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, placed before it 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.In the light of the legal provisions under Section 22(4) of the TNVAT Act coupled with 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, this Court is of the view that a reasonable opportunity has not been afforded to the writ petitioner/ appellant and hence, on the sole ground the impugned order warrants interference. However, We would like to impose a condition to deposit 50% of the tax amount for setting aside the order of the 3rd respondent. As per Form 'O', the petitioner was called upon to remit an amount of Rs.1,06,177/-.

8.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.14973 of 2016 as well as the impugned assessment order in TIN 33055762640/2014-15 dated 28.07.2016, on the file of the 3rd

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respondent are set aside subject to condition that the appellant/writ petitioner should deposit 50% of the tax of Rs.1,06,177/- before the 3rd respondent within a period of two weeks from the date of receipt of a copy of this order, without prejudice to his rights and contentions. The 3rd respondent on receipt, is directed to consider the matter afresh in the light of the procedures contemplated under Section 22(4) and 27(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 time defer from such proceedings. No costs.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub-Assistant Registrar

To

1.The Secretary to Government,
Department of Commercial Taxes Department,
State of Tamil Nadu,
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Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
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3.The Assistant Commissioner (C.T) - 3,
C.T. Buildings, Madurai Road,
Virudhunagar District.

4.The Commercial Tax Officer,
Sattur Road Roving Squad,
C.T. Buildings, Madurai Road,
Virudhunagar District.

+One cc to Mr.Mohamed Ibrahim Ali, Advocate, SR.No.71253
+One cc to The Special Government Pleader, SR.No.71112
sj
RL/7C/4P/SS3/ARCS2/24.11.2016

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