BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :15.07.2016
CORAM
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD).No.12404 of 2016 and
WMP(MD)Nos.9420 and 9421 of 2016

Tvl.Anthony & Co.,
Represented by its Prop P.Ramasamy ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Commercial Taxes & 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(Main),
Kovilpatti II,
Tuticorin District. ... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certioraried Mandamus to call for the records relating to the order of the third respondent in his proceedings in TIN.No.33675942525/2012-2013, dated 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 third respondent to accord an opportunity of personal hearing and pass fresh order for the assessment year 2012-2013 under the TN VAT Act.

For petitioner : Mr.M.Md.Ibrahim Ali
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader

ORDER

Tvl. Anthony & Co, represented by its Proprietor P.Ramasamy, having suffered the impugned order passed by the Commercial Tax Officer(main), Kovilpatti in TIN.No. 33675942525/2012-2013, dated 30.03.2016, making reversal of I.T.C and levying penalty under Section 27(3)(c)TNVAT Act, 2006, has brought this Writ Petition on the ground that when the third respondent issued the pre-assessment notice, dated 13.10.2015, calling upon the petitioner to submit his explanation, a detailed reply was made ready and submitted to the third respondent in person on 19.10.2015 informing that the petitioner has already paid the tax along with returns.

2. The learned counsel for the petitioner would submit that a bare reading of the reply submitted by the petitioner would clearly show that the seller has made sales to the petitioner and the tax has been paid by way of cheque. Moreover, all the purchases are made from the India Cements Limited. But the third respondent without considering the reply/objections and even without giving personal hearing to the petitioner, which is mandatory, proposed to levy penalty under Section 27(3)(c) of the Act and has also passed the impugned order confirming the proposal and reversing the I.T.C, demanding a sum of Rs.1,70,048/- and levying penalty of Rs.2,55,072/-. Therefore, the impugned order may be set aside for the reason that no opportunity of hearing was given to the petitioner, hence, the matter may be remanded back to the third respondent since all the documents are ready with the petitioner and he would be able to convince the third respondent. He would further submit that since the petitioner has also, due to passage of time, lost the time to file an appeal, lenient view may be taken and the petitioner may directed to deposit 25% of the disputed amount and on receipt of such deposit, the third respondent may be directed to re-hear the matter.

3. Opposing the above prayer, the learned Additional Government Pleader appearing for the respondents heavily contended that even though the petitioner claimed to have submitted a reply in person on 19.10.2015 before the third respondent, there is no proof for the same. Secondly, while the third respondent issued the pre-assessment notice seeking explanation as to why reversal of I.T.C should not be invoked, for the various reasons mentioned in the said notice, the petitioner for the reason best known to him, had not sent any reply to that said notice. He has further submitted that Form-U has also been issued to the petitioner, therefore, at this stage, no interference is called for.

4. Heard the submissions made on both sides and perused the materials available on record.

5. I find some merits in the submission made by the learned Additional Government Pleader. When the petitioner claims to have filed reply before the third respondent in person, it is unbelievable that the petitioner being a business man has submitted a reply in person, particularly, when he has received a registered notice from the third respondent. Therefore, this Court is not able to find any merit in this Writ Petition.

6. In the result, this Writ Petition is dismissed. However, it is open to the petitioner to approach the appellate authority within a period of two weeks from the date of receipt of a copy of this order. In the event of filing such appeal, the appellate authority shall consider the same and pass appropriate orders, on merits and in accordance with law.

I

No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes & 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(Main),
Kovilpatti II, Tuticorin District.

+1cc to M/s.Mohammed Ibrahim Ali, Advocate SR.No.37175/16
+1cc to special Government Pleader SR.No.37171/16

Copy to:The Section Officer,
ER Section,
Madurai Bench of Madras High Court, Madurai

pm
sm:SKS-RR:09/09/2016:3P/7C

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