BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.08.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).No.16025 of 2016
and
W.M.P(MD)No.11717 and 11718 of 2016

M/s Selvin Jeyakumar
Works Contractor
11/56a, Chavilai,
Palapallam,
Kalkulam - 621 959,
Kanyakumari District. ... Petitioner

Vs.

The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a WRIT OF CERTIORARIFIED MANDAMUS to call for the records on the file of the respondent in TIN 33376163947/2012-13 dated 16.06.2016 and to quash the same as illegal arbitrary and in violation of the principles of natural justice and against the judgment report in (2015) 82 VST 457 in the case of Tvl. Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle, Chennai, and direct the respondent to pass assessment order afresh after affording a opportunity of being heard to the petitioner by considering the reply dated 11.04.2016 filed by the petitioner and the circular issued by the Commissioner of Commercial Taxes, Chennai in Circular No.54/2014 Ref.No.D3/34875/2014 dated 14.11.2014 within such time as may be directed by this Court.

For petitioner : Mr.S.Karunakar

For respondents : Mr.R.Karthikeynan
Addl. Govt. Pleader

ORDER

M/s Selvin Jeyakumar, who is engaged in the business of executing works contract for the various departments of State Government, has assessed his taxable turnover at Rs.34,53,983/- and Rs.11,91,672/- under Section 22(2) of the TNVAT Act on 24.05.2013. Subsequently, the respondent issued a notice dated 28.03.2016 informing the petitioner that the nature of work executed by the Contractor was verified with reference to monthly returns and in that process, they found that the deemed sale value of transfer of property reported by the Contractor for the above contract works representing 34% was not proportionate. It was also mentioned that on verification of return, it was revealed that certain purchases made from one Tvl Thangam Hardware were not disclosed by the selling dealer in the Annexure. On this basis, the respondent proposed to reverse the ITC under Section 19(5) of the TNVAT Act. Immediately, on receipt of the revision notice, dated 30.03.2016, it is stated that the petitioner also filed a reply dated 12.04.2016. In the said reply, dated 12.04.2016, the petitioner requested the respondent to give chance to explain their case in person before passing any order. However, without considering the same, the respondent has passed the impugned order. Taking the strong ground that the respondent has miserable failed to give a personal hearing to the petitioner, which is in total violation of principles of natural justice, the present writ petition has been filed.

2.Learned counsel for the petitioner would submit that the impugned order passed by the respondent department is per se illegal, arbitrary and also in gross violation of the principles of natural justice, because the respondent has not come forward to consider the request of the petitioner for granting personal hearing. Had their being the personal hearing given to the petitioner, the petitioner, who had effected the purchases from the registered dealers and paid the taxes due thereon to their sellers, could have been explained. Therefore, there is no mistake on the part of the petitioner. Since the respondent has miserable failed to give a chance to the petitioner to explain their case, the impugned order is liable to be set aside.

3. The learned Additional Government Pleader appearing for the respondent is unable to defend the impugned order, since the written request made by the petitioner in their reply dated 12.04.2016, asking personal hearing to explain their case, has not been considered by the respondent. Although the learned Additional Government Pleader attempted to go to the merits of the matter, this Court is not inclined to go to the factual aspects, since the petitioner was denied the opportunity of personal hearing in spite of their written request dated 12.04.2016. Therefore, the Writ Petition stands allowed and the impugned order is set aside. Liberty is given to the respondent to issue a

notice of personal hearing to the petitioner. On receipt of the same, the petitioner is directed to appear before the respondent to explain their case. After hearing the petitioner, the respondent further directed to consider the case of the petitioner under Rule 8(1)(d) of the Act and thereafter, pass orders on merits and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar.

To

The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay.

+1CC to the Special Government Pleader, SR.No. 49132

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