BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2016

CORAM :

THE HON'BLE Dr.JUSTICE S.VIMALA

W.P(MD)No.21114 of 2016

M/s.Nayagam Traders
rep.by its Proprietor
B.Raja ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
The Commercial Taxes Department,
2nd floor, Ezhilagam,
Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer (Main)
Thuckalay,
Kanyakumari District. ... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issue a Writ of Certiorarified Mandamus to call for the records relating to the order of the 2nd respondent in his proceedings in TIN No.33396162966/2014-2015 dated 23.09.2016 and quash the same and to direct the 2nd respondent to accord an opportunity of personal hearing and permit the petitioner to file revised return and pass fresh order for the assessment year 2014-2015 under the TN VAT ACT.

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

O R D E R

This is a Writ of Certiorarified Mandamus, seeking to quash the order of the second respondent dated 23.09.2016 and consequently direct the second respondent to provide an opportunity of personal hearing to the petitioner and permit the petitioner to file a revised return.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

3.The facts leading to the filing of the Writ Petition are as follows:

The petitioner is an assessee on the file of the second respondent. The second respondent issued pre-revision notice on 12.11.2015 stating that the dealer filed returns suppressing the tax turnover for the assessment year 2014-2015. After receiving notice, the petitioner filed objection on 23.01.2016 stating that the mistake is only a clerical mistake and it was on account of the software problem and it is not wilful suppression. But the impugned order has been passed stating that the dealer accepted before the authority that it is a wilful suppression.

4.The petitioner would point out the specific averments made in the objections filed by the petitioner which are as follows:

"(i)The assessee did not purchase any products from interstate dealers and the purchase is only from the State dealers, i.e., within the State.

(ii)The assessee did not commit any mistake purposely and the mistake has happened only on account of software mistake".

5.The learned counsel for the petitioner would also submit that if personal hearing has been afforded to the petitioner, he would have got an opportunity of explaining those facts and because of the non availability of opportunity, the petitioner was not able to substantiate that the mistake was only clerical and it is not on account of wilful suppression. It is also submitted that the petitioner should be given an opportunity of hearing and therefore, the matter must be remitted back to the authorities concerned.

6.The learned Additional Government Pleader for the respondents would submit that when the petitioner has appeared before the concerned authority and asked for excuses for the mistake committed, then, there is no purpose in remitting the matter back to the authority.

7.But, as pointed out earlier, there is a dispute as to whether the mistake is clerical or the mistake is wilful. Therefore, it is a matter, where remand has to be ordered.

8.The learned Additional Government Pleader for the respondents would insist upon at least 15% deposit of the tax demanded as a pre-condition for re-hearing.

9.The learned counsel for the petitioner relied upon a Division Bench Judgment of this Court in WA(MD)No.1323 of 2016 dated 29.09.2016, wherein, relying upon the circular issued by the Tax Department, the authorities have been directed to give an opportunity of personal hearing. The relevant portion of the order, which is at paragraph - 4, is extracted hereunder for useful reference:-

"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 ths 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 too 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."

10.Therefore, from the aforesaid decision, it is clear that the petitioner is entitled to an opportunity of personal hearing and also pursuant to the circular issued by the Principal Secretary, Commissioner of Commercial Taxes, Chepauk, Chennai.

11.Under such circumstances, the impugned order is set aside. The matter is remitted back to the second respondent subject to the assessee depositing 5% of the disputed tax amount within a period of four weeks. On such deposit, the second respondent shall offer an opportunity of hearing to the assessee and then pass orders in accordance with law.

12.The Writ petition is ordered accordingly. No costs. Consequently, WMP(MD)No.15096 of 2016 is closed.

Sd/-
Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
The Commercial Taxes Department,
2nd floor, Ezhilagam,
Chepauk, Chennai - 600 005.

2.The Commercial Tax Officer (Main)
Thuckalay, Kanyakumari District.

+1 CC to Mr.MOHAMMED IBRAHIM ALI, Advocate, SR No.67217
+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.67481

mj
SH/GSV-PM:29.11.2016:4P/5C

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