



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 05.12.2016
CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

WEB COPY

W.P.(MD) No.23295 of 2016
and
W.M.P.(MD) No.16727 of 2016

Savithiri Medicals
rep.by its Prop.Dr.A.Suresh
25-G, Kadambur Road
Kayathar-628 952
Tuticorin District

... Petitioner

-vs-

1.The State of Tamil Nadu
rep.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

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the order passed by the third respondent on 14.11.2016 in TIN No.33635942450/2015-2016 quash the same and to direct the third respondent serve the summons calling for the accounts, serve the show cause notice if any issued to the petitioner for the assessment year 2015-2016 under TN VAT Act call for the objections from the petitioner to afford an opportunity of personal hearing and to pass fresh orders for the assessment year 2015-2016.

For Petitioner : Mr.M.MD.Ibrahim Ali
For Respondents : Mr.R.Karthikeyan
Addl. Govt. Pleader

O R D E R

Mr.R.Karthikeyan, learned Additional Government Pleader, accepts notice on behalf of the respondents and with the consent of the respondents, this writ petition is taken up for final disposal at the admission stage itself.

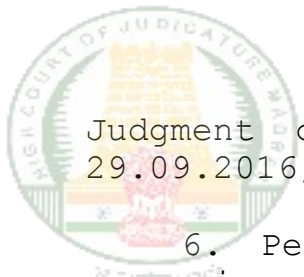


2. The prayer in this writ petition is for issuance of a writ of certiorarified mandamus to quash the impugned order, passed in TIN No.33635942450/2015-2016, dated 14.11.2016, by the third respondent and to direct the third respondent to pass fresh assessment orders for the assessment year 2015-2016, after affording opportunity of personal hearing to the petitioner.

3. According to the petitioner, he had filed returns belatedly by paying a fine of Rs.1,000/-. However, surprisingly, the third respondent served a notice for the assessment year 2015-2016 to his Accountant, who is unconnected to his business transactions, on 29.09.2016 and the same was handed over to him on 14.10.2016 and within the said date, the fifteen days time given under the said notice was expired. Even though the petitioner had taken steps to give reply, the same was refused by the third respondent stating that the fifteen days time was already over and the reply cannot be accepted. Thereafter, the third respondent has passed the impugned assessment order, dated 14.11.2016, for the assessment year 2015-2016. Challenging the same, the petitioner has come out with the present writ petition.

4. The learned counsel appearing for the petitioner submitted that on two legal grounds, the impugned order is unsustainable. According to him, the initial notice was issued to the petitioner, through his Accountant, by invoking the provisions of Section 22 (4) of the TN VAT Act, 2006 (hereinafter, it may be referred to as "the Act") and under the proviso to Sub-Section (4) to Section 22 of the Act, before taking any action under the said Sub-Section, the Dealer should be given a reasonable opportunity of being heard.

5. The learned counsel appearing for the petitioner also relied upon the Rule 19 of TN VAT Rules, 2006, wherein the mode of service of notice, summons and orders have been provided in detail. According to the learned counsel, there are four modes of service and in the case of the petitioner, none of these four modes have been duly followed by the third respondent, while serving the notice under Section 22(4) of the Act. That is the reason why, the notice was belatedly served and within which, the time of fifteen days for giving reply was expired. In spite of the said fact, though the petitioner had made an attempt to give reply to the notice, the same was not accepted by the third respondent and therefore, according to the petitioner, the action taken under Sub-Section (4) to Section 22 of the Act, which culminated in the impugned order, is totally in violation of the provisions of the Act and the principles of natural justice. In view of the same, the learned counsel appearing for the petitioner seeks the interference of this Court. In support of his contentions, the learned counsel has heavily placed reliance upon the recent



Judgment of the Hon'ble Division Bench of this Court, dated 29.09.2016, in W.A.(MD) No.1323 of 2016.

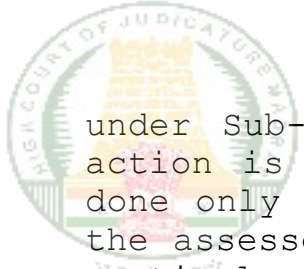
6. Per contra, the learned Additional Government Pleader, appearing for the respondents submitted that the notice, under Sub-Section (4) to Section 22 of the Act, was issued on 26.09.2016 itself. In the said notice, it was specifically mentioned that objections may be filed within a period of fifteen days from the date of receipt of the notice and it was specifically mentioned that opportunity of personal hearing is also provided to the petitioner to appear before the Authority concerned during the office working hours within fifteen days from the date of receipt of the notice. Therefore, opportunity as contemplated under Sub-Section (4) to Section 22 of the Act was already given to the petitioner.

7. The learned Additional Government Pleader appearing for the respondents further submitted that only in two circumstances, namely, violation of principles of natural justice as well as want of jurisdiction, the statutory appeal remedy, which is efficacious alternative remedy, can be dispensed with and in all other cases, the Dealer cannot invoke the extraordinary jurisdiction of this Court, under Article 226 of the Constitution of India. In this regard, the learned Additional Government Pleader, placed reliance upon Section 51 of the Act, which provides statutory appeal remedy against the order passed under Sections 22, 24, 26 to 29, 34 and 40 of the Act. If the petitioner wants to avail the statutory appeal remedy, he has to deposit 25% of the assessment amount and in order to escape from the clutches of the said statutory requirements, he has approached this Court.

8. The learned Additional Government Pleader further submitted that if this Court finds that the provisions of Sub-Section (4) of Section 22 of the Act have been violated and the matter is liable to be remanded back to the file of the third respondent for reassessment, then as a condition precedent, there shall be an order to comply with the payment of 50% or at least 25% of the assessment amount as provided in the case of appeal under Section 51 of the Act. At any rate, the impugned order was passed after following the due procedures as contemplated under the Act and of course, after giving opportunity of personal hearing to the petitioner and hence, the impugned order does not require interference of this Court.

9. Heard the rival submissions and perused the materials produced.

10. The mandatory requirements provided under the Act, especially under Sections 22(4) as well as 27(2) of the Act, cannot be disputed, more particularly when a notice is issued



under Sub-Section (4) to Section 22 of the Act and any further action is taken by the authorities concerned, the same shall be done only after giving a reasonable opportunity of being heard to the assessee. The law is well settled in this regard that when a particular thing to be done in a particular manner, then it has to be done in that particular manner and not in other manner. This age-old principle has to be scrupulously followed by the authorities concerned acting under the statute.

11. In the present case on hand, it is the specific case of the petitioner that the initial notice was not served on him in the manner known to law as it has been provided under Rule 19 of the TN VAT Rules, 2006. Secondly, before getting the notice issued under Sub-Section (4) to Section 22 of the Act, the fifteen days time to give reply was over. In spite of the said factor, though the petitioner had made an attempt to give reply, the same was refused stating that the fifteen days time was already over. When the very reply itself was refused by the third respondent, affording opportunity of personal hearing could not have been given as the same was not possible for the third respondent. Therefore, the arguments advanced by the learned Additional Government Pleader that opportunity of personal hearing was given to the petitioner cannot be countenanced.

12. Insofar as the recent Judgment of the Hon'ble Division Bench of this Court, dated 29.09.2016, in W.A.(MD) No.1323 of 2016, is concerned, wherein also a similar issue came up for consideration and the Hon'ble Division Bench of this Court, after considering the materials produced, in Paragraph Nos.8 and 9, has held that:

"8. It is the specific submission of the appellant, as per paragraph No.4 of the affidavit filed in support of the Writ Petition, that as against the notice dated 13.10.2015 issued by the third respondent, the appellant submitted his response on 19.10.2015 in person and informed the third respondent that he had already paid the tax along with the returns. However, it is the stand of the respondents that despite being afforded opportunity, the appellant did not avail of the same. In this connection, it is pertinent to point out that as per the Circular cited supra, as regards the revision of assessment before passing the revision order, the dealer should be given reasonable opportunity, if required so and no order of revision should be made without affording an opportunity to the dealer as provided under Sections 22,25,27 of the Act. In the light of the defence taken by the appellant and also the Circular cited supra, this Court is



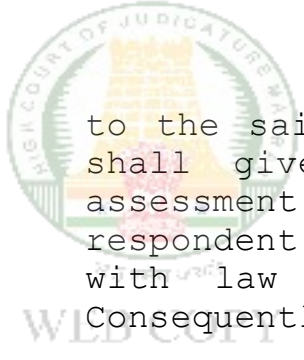
of the considered view that the appellant should be afforded to one more opportunity to sustain his plea as to the payment of tax along with the returns.

9. In the result, this Writ Appeal is allowed and the impugned order passed in W.P. (MD).No.12404 of 2016 dated 15.07.2016 as well as proceedings of the third respondent dated 30.03.2016 in the form of Form-U Notice to the bankers on 27.06.2016 are set aside and the matter is remanded back to the third respondent, who shall fix the date of hearing and intimate the same to the appellant. It is open to the appellant to avail the said opportunity before the third respondent, in the manner known to law. The third respondent is directed to complete the said exercise and pass orders in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed."

13. In the above referred case also, there was a dispute with regard to affording opportunity of personal hearing and the Hon'ble Division Bench was of the view that one more opportunity can be given to the appellant therein and for the said purpose, the matter was remanded back to the third respondent therein for fresh consideration.

14. In the present case also, though it was claimed by the third respondent that opportunity of personal hearing, under Sub-Section (4) to Section 22 of the Act, was given to the petitioner, there is no proof for the same. The said provision is not directory, but it is mandatory. Therefore, in the absence of the same, the impugned order is totally unsustainable and it is liable to be set aside.

15. In the result, the writ petition is allowed and the impugned order, passed in TIN No.33635942450/2015-2016, dated 14.11.2016, by the third respondent, is set aside and the matter is remanded back to the file of the third respondent for re-assessment and while doing re-assessment process, the mandatory requirements, as discussed in the above said provisions of the Act, have to be scrupulously followed. When such a notice is issued in the re-assessing process, the petitioner shall respond for the same within the time stipulated therein and opportunity of personal hearing also shall be given to the petitioner. At any rate, the needful shall be done by the third respondent within a period of four weeks from the date of receipt of a copy of this order. It is needless to mention that in order to strictly adhere



to the said four weeks time given by this Court, the petitioner shall give his full co-operation for completion of the re-assessment process and thereafter, it is open to the third respondent to pass reasoned orders on merits and in accordance with law within the time stipulated as above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/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 Mr.MD.Ibrahim Ali,Advocate Sr.No.79554
+1cc to M/S THE SPECIAL GOVERNMENT PLEADER, SR.NO.80013

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and
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