BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.09.2017

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)Nos.16901 & 16902 of 2017
and
W.M.P.(MD)Nos.13468 & 13469 of 2017

Tvl. Maharaj Readymades,
Rep. by its Partner, M.Ayishamariyam,
No.66/1, Lathams Bunglow Road,
Ramanathapuram : Petitioner in both writ petitions

Vs.

The Commercial Tax Officer,
Ramanathapuram. : Respondent in both writ petitions

COMMON PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari, calling for the records on the file of the respondent in TIN No.33245445200/2014-2015 and TIN No.33245445200/2015-2016 dated 07.07.2017 and quash the same as illegal, invalid and against the Principles of Natural Justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.R.Karthikeyan
Additional Government Pleader
(In both Writ Petitions)

O R D E R
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By consent of both parties, the writ petition itself is taken up for final disposal.

2.The present writ petitions are directed against the impugned orders passed by the Commercial Tax Officer, Ramanathapuram, in TIN No.33245445200/2014-2015 and TIN No.33245445200/2015-2016 dated 07.07.2017, on various grounds.

3.The petitioner who is a dealer in readymade garments, textiles etc., is an assessee on the file of the respondent herein, under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as 'TNVAT Act']. The petitioner had paid appropriate taxes collected from the dealers, after adjusting the Input Tax Credit available to them as per the rules prescribed therein. Thus, the petitioner's assessment orders for the assessment years 2014-2015 and 2015-2016, were deemed to be completed on 31.10.2015 and 31.10.2016, respectively, under self assessment.

4.While so, on 31.10.2016, the petitioner's place of business was inspected by the Officers of the Enforcement Wing. After completion of the inspection, the inspecting officers arrived at certain differences in purchases and sales as per the returns and also on the basis of the profit and loss accounts, by adopting wrong figures. However, without taking note of certain facts such as discount through credit notes, sales returns and double entry made in Annexure 1A, the inspecting officers further alleged that on verification of the check post movement details available in the Department website, certain inter-state purchases of the petitioner were not reported. Further, the inspecting officers, without verifying the petitioner's books of accounts and other connected documents, and without providing any opportunity to the petitioner, unilaterally concluded huge sales suppressions and forwarded proposals to the respondent herein to levy tax and penalty thereon by re-opening the petitioner's completed assessment for the year 2014-2015.

5.On the basis of the proposals sent by the Enforcement Wing Officers, the respondent issued revision notices dated 15.03.2017, proposing to levy certain taxes on the estimated sales suppression arrived at by the inspecting officers. The respondent further proposed to levy penalty at 150% under Section 27(3)(ii) and 50% under Section 27(4)(1) of the TNVAT Act for the assessment year 2014-2015 and 150% under Section 27(3) and 300% under Section 27(4) of the TNVAT Act for the assessment year 2015-2016. The petitioner on receipt of the said notices submitted detailed reply on 20.04.2017, explaining that there were no suppression either in the sales or in the purchases on their part.

6.Unfortunately, without even referring to the detailed explanations offered by the petitioner in their reply dated 20.04.2017, the respondent confirmed the proposals. A perusal of the impugned orders dated 07.07.2017, show that there is neither application of mind nor reference to the petitioner's reply / objections. This Court in a number of decisions has repeatedly reiterated that the Commercial Tax Officer, while discharging their duties should conduct themselves as a quasi judicial authority and pass a speaking order referring to the objections raised with reply.

7.In the present case, the Commercial Tax Officer has not only ignored the objections, but, has also not even mentioned any reasons to over rule the objection raised by the petitioner. Therefore, the impugned orders are liable to be set aside. Finally, it is argued that the impugned orders are also running contrary to the Principles of Natural Justice and also to the

Principles laid down by this Court in the cases reported in *33 VST Page 333* and in *146 STC Page 642*, as the assessment orders have been passed without granting an opportunity of personal hearing as sought for by the petitioner.

8.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the impugned orders cannot be construed as a non speaking order. The revision notices issued to the petitioner clearly shows that replies were called for, if any, to the proposals. On receipt of the said notices, the petitioner also submitted his objections on 20.04.2017. The respondent had also mentioned clearly in the impugned orders that he had carefully examined and recorded that the petitioner had already admitted the facts before the Enforcement Wing Officers, at the time of verification, ie., on 21.10.2016. Therefore, since the petitioner had already admitted before the enquiry officer, the objections filed thereafter, are not acceptable and only on that basis the revised assessment orders for the assessment years 2014-2015 and 2015-2016 have been passed.

9.But, this Court is unable to countenance either of the contentions made by the petitioner in respect of the impugned order or the impugned order for the sole reason that the petitioner had already admitted the facts before the enquiry officer. This Court has repeatedly held that when notices are issued calling for objections / reply, if any, within a stipulated time, on receipt of the said objection / reply from the assessee, a legal duty is cast upon the assessing officer to pass a detailed and speaking order, dealing with every objection raised by the assessee. In the present case, the Principles laid down by this Court in the cases reported in *33 VST Page 333* and in *146 STC Page 642,* have been given a goby.

10.Therefore, this Court, in a considered opinion finds that the impugned orders are non-speaking orders and the same are set aside and the matter is remitted back to the file of the respondent for fresh disposal. It is needless to mention that the respondents shall consider the objections filed by the petitioner carefully and pass appropriate orders after hearing the petitioner, within a period of two months from the date of receipt of a copy of this order.

11.Accordingly, the writ petitions are allowed and the impugned orders are set aside. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub-Assistant Registrar

To

The Commercial Tax Officer,
Ramanathapuram.

+One cc to The Special Government Pleader, SR.No.77640

+2 ccs to Mr.A.Chandrasekaran, Advocate, SR.Nos.77584 and 77583

MR/MRN

RL/5C/4P/KK/SAR1/2/11/2017

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