BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.09.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.(MD)No.17080 of 2017
and
W.M.P(MD)No.13668 of 2017

Tvl.Dhanalakshmi Electricals,
Rep. by its Partner,
A.Veerappan, aged about 70 years,
S/o. Annamalai,
No.18, Katcheri Road, Kallukatti,
Karaikudi,
Sivagangai District - 630 001. : Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of
   Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer,
   Karaikudi Assessment Circle,
   Commercial Tax Office,
   No.50/52, Jawahar Street,
   Karaikudi - 630 001. : Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in Assessment No.33105480003/2014-15 dated 02.08.2017 and quash the same.

For Petitioner : Mr.R.Veeramanikandan
For Respondents : Mr.R.Karthikeyan
Additional Government Pleader

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.This writ petition is directed against the impugned assessment order dated 02.08.2017 passed by the Commercial Tax

Officer, Karaikudi Assessment Circle.

3.The petitioner has given a detailed explanation on 06.07.2017, to the impugned pre-revision notice dated 02.05.2017, issued by the second respondent regarding the mismatch of purchase and sales. The petitioner has also enclosed the purchase and sales bills which tallied with their accounts and in reply to the allegation of excess reporting of a purchase turn over.

4.The learned counsel for the petitioner would submit that the petitioner has enclosed all the relevant bills for the perusal of the respondents. The respondents should have considered all the documents, as the petitioner has reasonably discharged his honesty. Had there been any doubt or had the Assessing Authority found any difficulty in agreeing with the documents enclosed with regard to the query raised in paragraph 5, namely, excess reporting of purchase turn over, the respondents should have called the petitioner for personal hearing in order to clarify the same, which has not been done. As a result, huge prejudice has been caused to the petitioner and secondly, a sum of Rs.3,41,533/- has been declared as the tax due, which is liable to be paid by the petitioner.

5.When the respondents come forward by giving a last opportunity to the petitioner, the petitioner will be able to satisfy all the queries since the documents produced by the petitioner are all available with the respondent. Thereafter, it is open to the respondents to pass appropriate orders. The learned counsel for the petitioner further submitted that when the respondents imposed penalty under Section 27 (3) (c), it is mandatory on the part of the respondent to give the petitioner an opportunity of personal hearing which has not been done. Therefore, he pleaded that in any event, the impugned order is liable to be set aside.

6.The learned Additional Government Pleader appearing for the respondents would submit that in the present case, when penalty under Section 27 (3) (c) and another penalty under Section 27 (4) (2) were passed, the Assessing Officer had, no doubt, to give an opportunity of personal hearing to the petitioner, either in respect of mismatch or on excess reporting of the purchase turn over. But, the petitioner having not asked for a personal hearing, cannot today assail the impugned order.

7.Although, this Court finds some force on the submission made by the learned Additional Government Pleader, as a matter of fact, when the respondent Assessing Officer has passed the impugned order levying two penalties one under Section 27 (3) (c) and another under Section 27 (4) (2) of the Tamil Nadu Value Added Tax Act, 2006, the Assessing Officer ought to have given an opportunity of personal hearing. Secondly, in the present case, a sum of Rs.3,41,533/- has been found as balance tax due payable by the petitioner. Therefore, the respondents in my considered opinion, should have given the petitioner a reasonable opportunity to explain his case by appearing in person. As it had not been done so and the matter involves the appreciation of facts, the respondents are hereby directed to give the petitioner a chance of personal hearing within a period of two weeks from the date of receipt of a copy of this order and thereafter pass final order.

8.The writ petition is disposed of with the above direction. No Costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T&P)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Commercial Taxes,
   O/o. The Principal and Special Commissioner of
   Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Commercial Tax Officer,
   Karaikudi Assessment Circle,
   Commercial Tax Office,
   No.50/52, Jawahar Street,
   Karaikudi - 630 001.

+ 1 CC TO Mr.B.ROOBAN, ADVOCATE IN SR No. 77786
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 78327

MR/VSG
TE/MR-KKR/SAR-I : 02/11/2017 : 3P/5C

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