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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.11.2017

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.(MD)No.19980 of 2017
and
W.M.P.(MD).No.16258 of 2017

Tvl.The Best Aluminium,
Represented by its Proprietor
S.Sankar,
No.182-E/2,S.N.High Road,
Thirunelveli-627 001. ... 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 Deputy Commercial Tax Officer,
   Thirunelveli Bazaar Assessment Circle,
   Commercial Taxes Building,
   Reserve Line Road,
   Palayamkottai,
   Thirunelveli District-627 002. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent, in TIN.33065641821/2013-2014 dated 16.08.2017 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.R.Karthikeyan,
Additional Government Pleader (Taxes)

O R D E R

Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents.

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2.In the earlier round of litigation on the subject matter, this Court by order dated 27.10.2015 in W.P(MD).No.19302 and 19303 of 2015 had passed this following order:-

> "6. Considering the facts and circumstances of the case, this Court passes the following order:-
>
> The petitioner firm is directed to remit 15% each of the disputed tax in question in both the Writ Petitions to the respondents within a period of two weeks from the date of receipt of a copy of this order. On such payment, the orders impugned in both the Writ Petitions are stand set aside and the respondents are directed to provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of two weeks, thereafter."

3. Thereafter, notice of hearing was issued by the second respondent on 13.03.2017 to the petitioner to produce the connected records and details for the years 2013-2014 in support of his dispute within 15 days from the date of receipt of the said notice, failing which it was informed that orders would be passed with reference to the available records without any prior intimation. Since the petitioner did not response to the same, another notice dated 31.07.2017 was issued requesting the petitioner to produce the connected records, which he had claimed to have been submitted before this Court in W.P(MD).Nos.19302 and 19303 of 2015 on or before 10.08.2017. Further, he was permitted to avail the opportunity of being heard in person within 10 days from the date of receipt of copy of that notice.

4. The petitioner by letter dated 10.08.2017, made a request for adjourning the matter, but did not submit any of the documents that were required by the second respondent. This had resulted in the second respondent passing final orders dated 16.08.2017, reaffirming the earlier order passed on 10.06.2015, which was set aside by this Court by order dated 27.10.2015 in W.P (MD).Nos.19302 and 19303 of 2015.

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5. The petitioner now challenges the order dated 16.08.2017, passed by the second respondent, on the ground that there was no communication from the second respondent, in respect of his request for adjournment made vide letter dated 10.08.2017 and resultantly, the petitioner was not in a position to have a reasonable opportunity to make his submissions in the matter in terms of Section 27(2) of Tamil Nadu Value Added Tax Act. Reliance has been placed in this regard on the order dated 30.10.2014 in W.P (MD).Nos.28374 to 28377 of 2014 passed by this Court in the case of M/s.Global Calcium Private Limited, Hosur vs. The Assistant Commissioner (Commercial Taxes), Hosur (North) and another, wherein it has been held in para 5 as follows:-

> 5. Under normal circumstances, in case where request for adjournment is made, it is open to the authority to accept or reject the same, however, while rejecting the same, the authority should bear in mind the provisions, namely, Section 27(2) of TNVAT Act, more particularly, the proviso under the said Sub-section which provides that no order shall be passed under Sub-sections (1) and (2) of Section 27 without giving the dealer a reasonable opportunity of showing cause against the said order. Therefore, even while rejecting the request, the authority should bear in mind the expression used in the proviso, namely, 'reasonable opportunity'. Therefore, in the instant case, the petitioner had stated that the proposal to reverse the ITC has been made without taking into consideration of adjustment of ITC towards future demands and that they wanted 30 days' time since they were collecting the details of adjustment of ITC. Therefore, the first respondent ought to have examined the issue in a more objective manner and should have taken note of the fact that opportunity to the Assessee should be a meaningful opportunity and it is not for the sake of mere satisfying or compliance of the statutory

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requirement. That apart, when the petitioner made a request for grant of 30 days' time, if the authority was not inclined to accept the request, then a separate order ought to have been passed prior to finalizing the assessment. Even in such a case, the Assessee should have been afforded an opportunity of personal hearing. Since all these above procedural illegalities have crept in, the impugned orders are liable to be quashed.

Having regard to the fact that the second respondent had not sent any communication to the petitioner with regard to his request for adjournment made vide letter dated 10.08.2017, in light of the aforesaid decision of this Court, it is contended by the learned counsel for the petitioner that the same is liable to be set aside.

6.When it was pointed out that the petitioner having not availed the opportunity provided by the second respondent, could not claim such equity without establishing how prejudice has been caused to him by the impugned orders, the learned counsel for the petitioner has today submitted a copy of the representation containing the objections to the second respondent, which is received by the learned Additional Government Pleader (Taxes) along with the pay order for 10% value of the disputed amount of tax levied by the impugned order. Further, the petitioner has filed an affidavit dated 09.11.2017 stating that he has deposited 10% of the disputed tax amount in addition to 15% of the amount already deposited while passing the earlier order dated 27.10.2017 in W.P.(MD).Nos.19302 and 19303 of 2015 in order to show his bona fides.

7.In order to render substantial justice between the parties and ensure that there is no miscarriage of justice, the impugned order is set aside in terms of aforesaid order dated 30.10.2014 in W.P(MD).Nos.28374 to 28377 of 2014 passed by this Court and proceedings are re-opened for fresh adjudication. The petitioner along with his authorised representative, if any, shall

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appear before the second respondent for personal hearing on 08.12 2017 to make his submission and shall not seek any adjournment under any score or any further extension of time. After hearing the petitioner, the second respondent shall pass reasoned orders on merits in accordance with law by duly considering all the objections raised by the petitioner in his representation dated 09.11.2017 with the documents filed in support thereof and communicate the decision taken to the petitioner on or before 31.12.2017.

8.Accordingly, the Writ Petition is disposed of. No costs. Consequently the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-I)

/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 Deputy Commercial Tax Officer,
   Thirunelveli Bazaar Assessment Circle,
   Commercial Taxes Building,
   Reserve Line Road,
   Palayamkottai, Thirunelveli District-627 002.

+1cc to M/S.B.ROOBAN, Advocate SR.No.88151.
+1cc to Special Government Pleader in SR.No.88198.

ORDER MADE IN
W.P.(MD) No.19980 of 2017
and
W.M.P.(MD)No.16258 of 2017
17.11.2017

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