



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

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THE HON'BLE Mr.JUSTICE R.SURESH KUMAR

W.P.(MD) No.19384 of 2013

M/S.V.V.K.Builders

Represented by its Proprietor V.Vijayakumar

99A North Perumal Maistry Street,

Madurai.

... Petitioner

-vs-

The Commercial Tax Officer,

West Tower Street Assessment Circle,

Dr.Thangaraj Salai

Madurai-20.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorarified Mandamus to call for the records in TIN33044801618/2009-10, dated 28.03.2013 on the file of the respondent and quash the same as illegal, arbitrary and against law and direct the respondent to pass assessment order afresh after affording an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.S.Karunakar

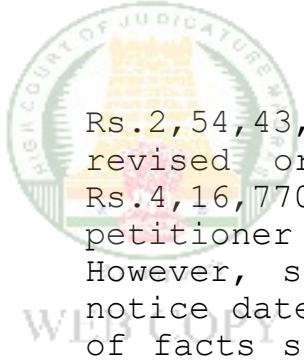
For Respondents : Mr.Raja Karthikeyan

Additional Government Pleader

O R D E R

The prayer in the writ petition is for a certiorarified mandamus to call for the records in TIN33044801618/2009-10, dated 28.03.2013 on the file of the respondent and quash the same as illegal, arbitrary and against law and direct the respondent to pass assessment order afresh, after affording an opportunity of personal hearing to the petitioner.

2. The petitioner is a Civil Contractor and an assessee on the file of the respondent. In respect of the assessment year 2009-2010, the petitioner was originally assessed by accepting their return under Section 22(2) of the TNVAT Act by the proceeding of the respondent dated 28.11.2011. As per the said order, the petitioner was entitled for refund of Rs.6,03,593/-. However, thereafter, the petitioner was reassessed by the respondent vide his proceeding dated 03.04.2012 determining total and taxable turn over of



Rs.2,54,43,875/- and Rs.46,36,963/- respectively. As per the said revised order, the petitioner was entitled to the refund of Rs.4,16,770/-. Since the petitioner was entitled for refund, the petitioner had approached the respondent several times for refund. However, surprisingly, the respondent had issued another revision notice dated 24.01.2013 for the same assessment on the very same set of facts stating that on further scrutiny of the assessment filed, it is revealed that the dealer has not furnished with any books of accounts in connection with the execution of work.

3. On receipt of the second revision notice, the petitioner had filed his objection, wherein, he has given detailed objections, as to the issue raised by the respondent in the second revision notice. In the said objections given by the petitioner, he has also requested for a personal hearing for appearance before the respondent and to produce all books of accounts for the assessment year 2009-2010. The said objection was submitted by the petitioner on 11.02.2013. In spite of the said objections having been filed, where a personal hearing was also sought for by the petitioner, suddenly, the impugned order of reassessment was passed on 28.03.2013 by the respondent, and a sum of Rs.77,990/- alone was made to be refunded as per the impugned order. The total turn over was fixed as Rs.2,54,43,875/- and after deducting the labour charges at 30%, the actual taxable turn over, according to the respondent, was Rs.1,78,10,713/- and after having given calculations for the tax due etc., ultimately, the respondent has stated that only a sum of Rs.77,990/- alone to be refunded to the petitioner. Challenging the said order, the petitioner has come out with the present writ petition with the aforesaid prayer.

4. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

5. The learned counsel for the petitioner would contend that the assessment has already been made, as stated supra and after completing the assessment, total refundable amount was also determined. Instead of paying the refundable amount, once again, the respondent issued a second notice for revision and even in respect of the said second revision notice, detailed objections were filed, where, it was also requested on the part of the petitioner to give a personal hearing, the respondent, instead of giving any personal hearing and opportunity to the petitioner to produce the accounts, has proceeded to pass the impugned order by giving totally a wrong calculation. The learned counsel for the petitioner would also submit that the petitioner, though was ready and willing to produce the relevant records required by the respondent, and for the said purpose only, he sought for a personal hearing, without giving any such opportunity of hearing and giving any opportunity enabling the petitioner to produce those records, the respondent straight away passed the impugned order. Therefore, it is totally unsustainable, he contended.



6. In this regard, the learned counsel for the petitioner also heavily relied upon the decision of the Division Bench of this Court in the matter of **SRC Projects Pvt Ltd., v. The Commissioner of Commercial Taxes, Chennai and another** reported in **2010(33) VST 333 (Madras)**.

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7. Per contra, the learned Additional Government Pleader (TAX) appearing for the respondent would contend that though originally an assessment order was issued, refundable amount to the petitioner was fixed, after having verified the records of the petitioner, it was found that there were lot of discrepancies, which necessitated the respondent to give the second revision notice. On receipt of the objections received from the petitioner and after having considered the said objections, the impugned order has been passed, wherein, cogent reasons have been given by the respondent as to how it has arrived at a conclusion, as has been given in the impugned order itself. Therefore, there is no need to interfere with the said impugned order and even in the impugned order, the commercial tax paid by the petitioner was directed to be refunded to the extent of Rs.77,990/- and therefore, the impugned order is a reasoned order. Hence, no interference is required.

8. This Court have considered the rival submissions made by the learned respective counsel.

9. Admittedly, the petitioner's assessment was originally accepted and an order to that effect was passed for refund of the amount to the extent of Rs.6,03,593/-. Thereafter the first show cause notice for revision was issued, even according to which, the amount refundable to the petitioner was quantified as Rs.4,16,770/-. When that being so, the 2nd show cause notice was issued, which was suitably objected by the petitioner by a detailed objection, wherein also, the petitioner has expressed the willingness to produce relevant records before the respondent and in this regard, he requested for a personal hearing to be given to the petitioner. In spite of the objections having been filed, where willingness of the petitioner was expressed to produce the records and also he has made a request for personal hearing, the respondent, instead of giving a personal hearing and a chance for the petitioner to produce the record, has straight away passed the impugned order. It is a mandatory requirement on the part of the respondent to give a personal hearing in case of reassessment and also more particularly, when such personal hearing is requested for by the assessee.

10. In this regard, the said Division Bench Judgment relied upon by the learned counsel for the petitioner would clearly say that a personal hearing is a mandatory requirement and without which, the assessment, that too, by way of reassessment cannot be completed. Even in the said case also, the Division Bench of this Court, after having considered various pronouncements of the Hon'ble Apex Court as well as other judicial forum, has ultimately concluded that the revision of assessment could not have been passed without



giving the assessee an opportunity of personal hearing.

11. Paragraph No.27 of the said order expressing the said proposition reads thus:

"We also hold, in the facts and circumstances of this case, the impugned order by way of revision of assessment should not have been passed without giving the assessee an opportunity of personal hearing. But since the same has been denied, the impugned order is hereby quashed."

12. In view of the said pronouncement of this Court, this Court is also of the considered opinion that the respondent should have given an opportunity of being heard to the petitioner before passing the revision of assessment order and in absence of the same, this Court has no hesitation to hold that the order impugned is not a sustainable one and hence the impugned order is quashed and the matter is remanded back to the respondent for reassessment. While doing the said exercise, the respondent shall give an opportunity of being heard to the petitioner and after considering the submissions as well as the documents anything made by the petitioner during the said hearing, the final order of reassessment shall be passed by the respondent in accordance with law. The said exercise shall be done by the respondent within a period of two months from the date of receipt of a copy of this order. It is needless to state that when such notice is given for personal hearing, the petitioner shall cooperate with the respondent by producing the records for completing the assessment process.

13. The writ petition is allowed in the above terms. No costs.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
West Tower Street Assessment Circle,
Dr.Thangaraj Salai
Madurai.

+ 1 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR No. 944
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 841

RR

TE/CM-MSA : 01/02/2017 : 4P/4C

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