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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.01.2017

CORAM

THE HON'BLE Mr.JUSTICE R.SURESH KUMAR
W.P. (MD) No.19659 of 2013

AND

W.P. (MD) No.1 OF 2013

Tvl. Sri Jayanthi Electricals

Represented by its Proprietor A.Krishnamurthi

D.No.101 A Old Trunk Road,

Sattur Viruthunagar District

... Petitioner

-vs-

1.The State of Tamil Nadu Represented

by its Secretary to Government

Department of Commercial Taxes,

Fort St. George, Beach Road,

Chennai.

2.The Commissioner of Commercial Taxes,

2nd Floor, Elilagam Chepauk, Chennai.

3.Additional Commercial Tax Officer,

Sattur, Virudhunagar District

... Respondents

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 relating to the proceedings passed by the third respondent in his proceeding in TIN No.33335782080/2007-08 dt 25.10.2013 received by the petitioner on 23.11.2013 and quash the same and to direct the 3rd respondent to take credit of Rs.1442/- paid on 15.05.2012 and to accord personal hearing to file all the record as directed by the appellate authority.

For Petitioner : Mr.A.S.Mujibur Rahman

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 relating to the proceedings passed by the third respondent in his proceeding in TIN No.33335782080/2007-08 dt 25.10.2013 received by the petitioner on 23.11.2013 and quash the same and to direct the 3rd respondent to take credit of Rs.1442/- paid on 15.05.2012 and to accord personal hearing to file all the record as directed by the appellate authority.



2. The short facts leading to the filing of the writ petition is that the petitioner, having challenged the order of assessment in revision passed by the third respondent, filed an appeal before the 2nd respondent. In the said appeal, the 2nd respondent being the appellate authority, by order dated 31.07.2012, had remanded the matter back to the third respondent/assessing authority to reassess the issue. It was also directed by the 2nd respondent appellate authority in the said order that if the appellants were in possession of any purchase bills on the contract, they were directed to produce the same before the Assessing Officer so as to seek exemption or reduction in rate of tax.

3. Pursuant to the orders passed by the 2nd respondent appellate authority, the third respondent had issued notices on 27.08.2012, 18.10.2012 and 11.07.2013. In response to the said notices, the petitioner, by letter dated 10.09.2012, had requested 10 days time to produce the documents required by the third respondent. Since no such documents, according to the respondents, had been produced by the petitioner, the third respondent issued a pre revision notice dated 12.09.2013, wherein, the third respondent directed the petitioner to file objections, if any, for the proposed tax to be imposed on the petitioner including levy of penalty at appropriate rate under Section 27(3) of the TNVAT Act and such objections to be filed before the third respondent within 15 days from the date of receipt of the notice, failing which, final order would be passed as proposed by the third respondent in the notice itself.

4. In response to the said pre revision notice dated 12.09.2013, the petitioner had submitted a detailed objections on 15.10.2013, which the third respondent had received on 17.10.2013. In the said objections, dated 15.10.2013 at Paragraph No.13, the petitioner has stated as follows:

"13.For all the above stated reason, I am enclosing herewith the copies of the Form XXXVII-A as informed in the notice dt 12.09.2013. The copies of the purchase bills, profit and loss account for your kind attention. In the above stated circumstances if you need any further records I am ready to produce the same if an opportunity of personal hearing is provided. In the above stated circumstances, the return already filed may kindly be accepted and orders passed."

5. In spite of the said submissions made in the objections filed by the petitioner requesting the third respondent to give a personal hearing and also to give an opportunity to the petitioner to produce any other documents, which are further required by the third respondent, apart from the documents that have already been produced, the third respondent has proceeded to pass the present impugned order dated 25.10.2013, as if the petitioner has not



produced any documents, whereby, according to the third respondent, the petitioner had to pay a sum of Rs.21,424,- as tax. Challenging the said order, dated 25.10.2013 passed by the third respondent, the petitioner has come out with the present writ petition with the aforesaid prayer.

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6. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.

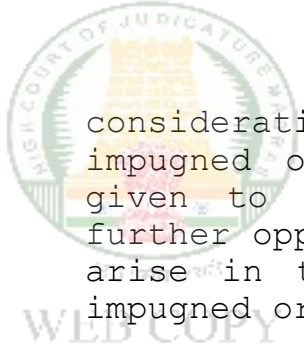
7. The learned counsel for the petitioner would contend that it is a settled proposition of law that whenever reassessment or review is taken by the respondent authorities, a personal hearing must be given to the parties and an opportunity also to be given to the assessee to produce whatever the records available with them and whatever records required by the authorities for completing the assessment in a particular assessment year. This position has been reiterated in a number of decisions including a Division Bench judgment of this Court reported in SRC Projects Pvt Ltd., v. The Commissioner of Commercial Taxes, Chennai and another reported in 2010(33) VST 333 (Madras).

8. In the said order, 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."

9. When the position has been made clear that giving an opportunity of personal hearing is a mandatory requirement, the same has been denied to the petitioner, in spite of the same has been requested for by the petitioner, when he made objections on 15.10.2013. Therefore, the learned counsel for the petitioner submits that the impugned order making the assessment and reviewing the tax on the petitioner, without affording an opportunity of personal hearing, is bad in law and therefore, the impugned order is to be interfered with.

10. Per contra, the learned Additional Government Pleader would contend that pursuant to the orders passed by the appellate authority on 31.07.2012, notices were given to the petitioner on three occasions. In spite of the notices having been given on three occasions, no reply was received from the petitioner and no documents were produced. Therefore, as a final chance, a pre revision notice dated 12.09.2013 was issued, where the proposed assessment has been indicated and objections were called for from the petitioner within 15 days. Within the said time, the petitioner had also given his objections. On receipt of the same, the said objections have been completely taken into account by a detailed



consideration of the third respondent, which is reflected in the impugned order itself. Therefore, enough opportunities have been given to the petitioner and therefore, the question of giving further opportunity, as has been claimed by the petitioner would not arise in this case and therefore, there is no infirmity in the impugned order. Hence, it warrants no interference, he contended.

11. This Court has considered the rival submissions made by the learned respective counsel for the parties.

12. As has been rightly held by this Court in number of occasions, that whenever review assessment is made by the authorities, under the TNVAT Act, opportunity of personal hearing must be given to the assessee. As has been declared by the Division Bench of this Court in the said judgment cited supra, giving of personal opportunity is a mandatory requirement without which no assessment can be completed. Non giving of such opportunity to any assessee would amount to denial of opportunity and the same is in violation of the concerned provision of the Act and therefore, the impugned order is liable to be interfered on the said sole ground alone.

13. The petitioner in his objections dated 15.10.2013 itself had specifically requested for personal hearing. In spite of the said request having been made by the petitioner, the said opportunity of personal hearing has been denied, as there is no proof to show that such a personal hearing was given to the petitioner. Even though an attempt has been made by the learned Additional Government Pleader for the respondents that such a personal hearing had been given to the petitioner, there is no proof filed by the respondents, in this regard to show that such a personal hearing had been given to the petitioner. Therefore, in view of the said facts and circumstances of the case, this Court is of the considered view that the impugned order, without having been an opportunity of being heard to the petitioner, is infirm and is unsustainable and therefore, it is liable to be quashed. Accordingly, it is quashed.

14. Resultantly, this writ petition is allowed in part. The impugned order is quashed and the matter is remitted back to the third respondent for reassessment.

15. Before making the reassessment, the third respondent is directed to give an opportunity of personal hearing to the petitioner by giving a written notice fixing the date and time of such personal hearing to the petitioner and on the date of hearing, if the petitioner is expected to produce any more documents and the list of such documents shall also be indicated by the third respondent in the said notice. On receipt of such notice from the third respondent, the petitioner shall appear before the third respondent for personal hearing with relevant documents and also to cooperate with the third respondent for completion of the assessment process. After completing the mandatory formalities, the



reassessment process shall be completed by the third respondent and a revised order shall be passed thereon and all these directives have to be completed by the third respondent within a period of three months from the date of receipt of a copy of this order. No costs. Consequently connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(cs-I)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government
Department of Commercial Taxes,
Fort St. George, Beach Road, Chennai.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam Chepauk, Chennai.

3.Additional Commercial Tax Officer,
Sattur, Virudhunagar District.

+1cc to Mr.A.S.MUJIBUR RAHMAN Advocate in SR. No.682

+1cc to Special Government Pleader in SR. NO.815

RR

/JS/JM/15.02.2017/5P-6C

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