IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.1.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WRIT PETITION NO.4521 OF 2017 & WMP.NOS.4747 & 4748 OF 2017

Tvl.T.J.Arumugam & Co., rep.
by its Proprietor T.J.Arumugam ...Petitioner

Vs.

1.The State of Tamil Nadu, rep.by
its Secretary to Government,
Department of Commercial Taxes
& Registration Department,
Fort.St.George, Chennai-9.

2.The Commissioner of Commercial
Taxes, II Floor, Ezhilagam, Chennai-5.

3.The Assistant Commissioner (CT),
No.22, Cutchery Street, Ponneri.
PIN : 601204. ...Respondents

PETITION under Article 226 of The Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings as per the assessment order ordered in his proceedings in TIN.33781701285/2008-09 dated 18.1.2017 received by the petitioner on 20.1.2017 passed by the third respondent, quash the same and direct the respondents to pass orders after affording the opportunity of personal hearing and issue the refund voucher along with interest for the assessment years 2008-09 to 2013-14 as ordered by this in W.P.No.17220 of 2016 dated 08.6.2016.

For Petitioner : Mr.Md.Ibrahim Ali
For Respondents: Mr.K.Venkatesh, GA

ORDER

Heard both.

2. The petitioner, which is a registered dealer on the file of the third respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is a contractor doing works contract. The petitioner is aggrieved by the order of assessment dated 18.1.2017 primarily on the ground that the third respondent did

not afford an opportunity of personal hearing, though the revision of assessment has been done under Section 27 of the said Act.

3. In terms of the Proviso to Section 27(2) of the said Act, where for any reason the input tax credit has been availed by the dealer wrongly or where any dealer produces false bills, vouchers, declaration certificate or any other documents with a view to support his claim of input tax credit or refund, the Assessing Authority shall, at any time, within a period of five years from the date of order of assessment, reverse input tax credit availed and determine the tax due after making such a enquiry, as it may consider necessary. However, prior to passing such an order, a reasonable opportunity to show cause against such order shall be granted. This opportunity has been interpreted by Courts to mean that apart from entitling the dealer to submit their objections, the dealer should be heard in person, because, in an assessment proceeding, complicated factual issues would arise for consideration.

4. So far as the petitioner herein is concerned, they approached this Court earlier and filed W.P.No.17220 of 2016 praying for the issuance of a direction to the third respondent to consider their representation and issue refund voucher to the tune of Rs.1,12,99,550/- along with interest for the assessment year 2007-08. The said writ petition was disposed of by order dated 08.6.2016 on the following terms :

> "4. It is pointed out by the learned counsel appearing for the petitioner that, for all the aforesaid assessment years, Notice of Assessment and Refund Order in Form P has been issued by the respondent/assessing officer, which clearly shows that the petitioner is entitled to refund of the excess tax paid. Therefore, the petitioner submitted individual representation, numbering 7, all dated 02.2.2016, and, except the representation, made for the year assessment year 2007-08, requesting for adjustment of the balance tax and penalty from the excess amount collected for the year 2008-09, all other representations have been made seeking for refund of the excess amount. Though, it is stated that the representations have been received by the Authority, yet, no orders were passed. Therefore, the petitioner sent another common representation, dated 30.3.2016 for all the assessment years. Since the said representation too, evoked no response, the petitioner is constrained to approach this Court, seeking for the prayer, as mentioned above.

> 5. The learned Additional Government Pleader, who accepts notice for respondents, would submit that reasonable time may be granted to the Authority to pass appropriate orders.
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> 6. In the light of the above, there will be a direction to the third respondent to consider the petitioner's individual representation, dated 02.2.2016, followed by a common representation, dated 30.3.2016, and pass orders, on merits and in accordance with law, within a period of six weeks from the date of receipt of a copy of this order."

5. Thus, in terms of the above direction, the third respondent was required to consider the petitioner's refund claim. However, the third respondent issued a notice dated 06.8.2016 calling upon the petitioner to furnish copies of the audited balance sheets along with profit and loss account for the years 2008-09 to 2011-12 and copies of Form WW along with profit and loss account for the years 2012-13 and 2013-14 within a period of 3 days. After about 10 days, by another notice dated 16.8.2016, the petitioner was informed by the third respondent that the petitioner may appear before him on 19.8.2016 for a discussion regarding request for refund made by them vide application dated 30.3.2016.

6. The petitioner is stated to have appeared on the said date and also submitted a written representation dated 19.8.2016 pointing out that all the relevant records, as required by the third respondent, were furnished to the VAT audit officers and that they received the final assessment order from the Assistant Commissioner, Ponneri with a lot of mistakes, as revised by the other Assistant Commissioner, Ponneri and the assessment order has been issued along with Form P Notice. It was further pointed out that instead of issuing refund vouchers, the balance sheets and the profit and loss account were called for, which have also been filed. It is not clear as to what happened to the proceedings pertaining to the petitioner's request for refund. But, the petitioner was visited with another notice dated 30.8.2016 proposing to reopen the assessment for the year 2008-09.

7. Though in the notice dated 30.8.2016, the order passed by this Court in W.P.No.17220 of 2016 dated 08.6.2016 has been referred to in S.No.4, the third respondent proposed to redetermine the total and taxable turnover of the petitioner. The petitioner also submitted their objections dated 05.12.2016 pointing out that there is no case made out for revising the earlier assessment. However, in the representation dated 05.12.2016, the petitioner has not specifically made a request for providing an opportunity of personal hearing. Further, in

the pre-revision notice dated 30.8.2016 in paragraph 12, the petitioner was informed by the third respondent that if the dealer desires to have a personal hearing, he may appear before him at 11 AM on any working day within a period of 15 days. But, the petitioner did not appear before the third respondent within the said period and ultimately, the third respondent passed the impugned order and confirmed the proposal in the notice dated 30.8.2016.

8. As pointed out earlier, Courts have held that an opportunity of personal hearing is mandatory when revision of assessment is sought to be done under Section 27 of the said Act. In the instant case, apart from levy of tax, there is also an order levying penalty under Section 27(3) of the said Act. Therefore, it is more necessary that an opportunity of personal hearing should be granted and that the opportunity should be an effective opportunity and not an empty formality. The respondent, though stated in the revision notice dated 30.8.2016 that the dealer can appear before him on any working day, that, by itself, will not be sufficient, as the Assessing Officer has to first consider the objections and apply his mind and there may be cases where the Assessing Officer may be convinced with the explanation offered and may drop the proposal. Hence, to state that the dealer can appear before the Officer at 11 AM on any working day will not be sufficient compliance of the principles of natural justice. On the said ground, this Court is inclined to interfere with the impugned assessment order.

9. That apart, though already there has been a direction to consider the petitioner's request for refund and an opportunity of personal hearing was given by the third respondent to discuss the refund issue, the same has been left aside and the third respondent proposed to revise the total and taxable turnover. In such circumstances, the opportunity offered to the petitioner should an effective opportunity especially when the third respondent observed that if the petitioner had entrusted works contract for pure contract labour, they ought to have produced the certificate from the Assessing Officer concerned as per Section 13(1)(c) of the said Act. However, the third respondent did not call for such certificate. Therefore, it is made clear that the petitioner did not have effective opportunity to put forth their objections before the third respondent. For all the above reasons, the reasons contained in the impugned order call for interference.

10. Accordingly, the writ petition is allowed, the impugned order is set aside and the matter is remanded to the third respondent for a fresh consideration. The third respondent shall

fix a date for personal hearing, hear the authorized representative of the petitioner and redo the assessment in accordance in law. No costs. Consequently, the connected WMPs are closed.

Sd/-
Deputy Registrar

/true copy/

Sub Asst. Registrar

To
1.The Secretary to Government of Tamil Nadu, Department of Commercial
Taxes & Registration Department, Fort.St.George, Chennai-9.

2.The Commissioner of Commercial Taxes, II Floor, Ezhilagam, Chennai-5.

3.The Assistant Commissioner (CT), No.22, Cutchery Street, Ponneri.601204.

+ 1 cc to Mr.Md.Ibrahim Ali Advocate,SR.238

+ 1 cc to The Special Govt.Pleader(Taxes), SR.499

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nr 02/02/2018