IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2018

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.No.8296 of 2010
and
M.P.No.1 of 2010

M/s.Gemini Graphics
Represented by its Partner,
B.Shanmugasundaram, 138-A, Kumaran Road,
Tirupur-641 601. ... Petitioner

Vs

The Commercial Tax Officer,
Central I Assessment Circle,
Tirupur. ... Respondent

Prayer: This Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorari to call for the records on the file of the respondent in TNGST.2403086/05-06 dated 22.03.2010 and quash the same as being contrary to the principles of natural Justice.

For petitioner: Mr.R.Senniappan

For respondent: Mr.Hariharan
Additional Government Pleader

O R D E R

Challenging the order passed by the respondent vide his proceedings in TNGST.No.2403086/2005-06 dated 22.03.2010, the petitioner has come up with the present writ petition.

2. The case of the petitioner is that originally, an assessment order came to be passed on 22.06.2007 determining their total and taxable turnover at Rs.53,77,044/- and Rs.46,53,904/- respectively, for the year 2005-2006 under the TNGST Act and the same was subsequently, revised by the respondent, under Section 55 of the Tamil Nadu General Sales Tax Act, 1959 by the impugned order dated 22.03.2010, without providing any opportunity to the petitioner to file their objections. Hence, this writ petition.

3. Though the petitioner has raised very many grounds to challenge the order impugned herein, the learned counsel for the

petitioner restricted the same only to the effect that the impugned order came to be passed without affording any opportunity to the petitioner, which is in gross violation of the mandatory provision under Section 55 of the Act and also against the principles of natural justice. In support of his contention, the learned counsel placed reliance on the order of this Court dated 14.07.2008 in W.P.No.50426 of 2006, wherein, this Court, under similar circumstances, has allowed the said writ petition and set aside the order impugned therein. Thus, the learned counsel prayed to allow this writ petition, by setting aside the order impugned herein.

4. The learned Additional Government Pleader appearing for the respondent is unable to produce any records to show that before passing the impugned order, the respondent has provided sufficient opportunity to the petitioner to put forth their case.

5. Heard both sides and perused the records.

6. Admittedly, the order impugned herein has been passed by the respondent, without affording any opportunity to the petitioner. Hence, the same is arbitrary, illegal and against the principles of natural justice. On this score alone, the revised order passed by the respondent is liable to be set aside.

7. Further, in the order cited by the learned counsel for the petitioner, this Court held as follows:

> "7...The proviso to Section 55 of TNGST Act mandates that, before passing of any order, sufficient opportunity should be given to the parties concerned. In the present case, as I have already held, such opportunity was not given to the petitioner. Though an order made under Section 55 of TNGST Act, is revisable under Section 33 of TNGST Act, in this case, since the impugned order has been passed in gross violation of the principles of natural justice and the mandatory provision contained in Section 55 of TNGST Act, I am of the view that the impugned order is liable to be quashed and the matter required to be remanded back.
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> 8.In view of the above, without expressing any opinion in respect of the other merits of the grounds raised by the petitioner, this writ petition is allowed; the impugned order is quashed; the matter is remitted back to the respondent for fresh disposal in accordance with law and the respondent is directed to afford sufficient opportunity to the petitioner and to pass a fresh order 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."

8. In view of the above, without expressing any opinion in respect of the merits of the grounds raised by the petitioner, this writ petition is allowed; the impugned order dated 22.03.2010 passed by the respondent relating to the assessment year 2005-06 is quashed; and the matter is remitted back to the respondent for fresh disposal. The respondent is directed to afford sufficient opportunity to the petitioner and to pass a fresh order within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer,
Central I Assessment Circle,
Tirupur.

+1cc to Mr.R.Senniappan, Advocate sr.no.44320

W.P.No.8296 of 2010

kji(co)
nr 03/10/2018