BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.9597 to 9600 of 2018
and
W.M.P(MD)Nos.8869 to 8872 of 2018

Tvl.Sree Jeyam Super Market,
represented by its
Partner,
R.Boologa Raja,
No.119/1,2,3 & 4, Devarpuram Road,
Tuticorin. ... Petitioner in all W.Ps.,

Vs.

The Commercial Tax Officer (ADDL)(ST),
Thoothukudi-III Circle,
Thoothukudi. ... Respondent in all W.Ps.,

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records on the file of the respondent in TNVAT/33885924707/2011-12, TNVAT/33885924707/2012-13, TNVAT/33885924707/2013-14, TNVAT/33885924707/2014-15, respectively dated 19.03.2018 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

* * * * *

COMMON ORDER

By consent, the writ petitions are taken up for final disposal.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. He filed returns for the assessment years 2011-12 to 2014-15. Pursuant to the surprise inspection conducted by the Enforcement Wing officials, revision notices were issued by the respondent. The petitioner filed his objections and an opportunity of personal hearing was also given to the petitioner by the respondent. However, at the time of personal hearing, the petitioner appeared to have produced

only excel working sheets for the sale made by them. The respondent has observed as under:

> "... But the partner of the concern Mr.R.Boologaraja appeared well before on 14.02.2018, and produced the letter with contention that **"We are providing our accounts for verification and other details corresponding to the inspection." But he has produced only the Excel Working Sheet for sale made by them. They have not produced Book of Accounts, Day Book Ledger, Purchase Bills & Sale Bills, and Cash Book to sustained their claim. They have simply given worksheet only for sale and purchases.**
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> In the reply dated 06.03.2017 in page No.2, that in the absence of entire verification of accounts enquiry, the assessment cannot be completed fully. So, personal hearing given for production of Book Of Accounts and all other records. But they simply given working sheet. On personal hearing given on 14.02.2018. So I have not verify their contention of the objection without book of accounts. Hence I have no other alternative except to confirm the proposals and orders passed under Sec.27(1) of the TNVAT Act ..."
>
> [extracted as such]

3. A reading of the impugned order shows that because the petitioner has not produced the accounts books, the assessing officer refused to verify the contention of the petitioner and the objections raised by him. Such a conduct is not recognised or encouraged by law.

4. The instructions issued by the Head of the Commercial Tax Department lays down procedures for passing assessment order, wherein it is stated that the assessing authority shall be flexible when it is required to grant time to the dealers in order to achieve the object.

5. In this case, it appears that the petitioner has produced only excel working sheet and not the books of accounts. If at all the assessing authority required the books of accounts, a date may be fixed for production of the same. The confirmation of the proposals was made without any basis and without verifying the books of accounts. Furthermore, the objections raised by the petitioner were not considered and the authority recorded that he has not verified the objections of the petitioner for want of books of accounts.

6. In such circumstances, the orders passed by the respondent are without any materials and it amounts to denial of opportunity

to the petitioner. Since denial of opportunity of personal hearing is violative of principles of natural justice, I am inclined to set aside the impugned orders passed by the respondentinTNVAT/33885924707/2011-12, TNVAT/33885924707/2012-13, TNVAT/33885924707/2013-14, TNVAT/33885924707/2014-15, dated 19.03.2018 and remit the matters back to the respondent for fresh consideration. The petitioner is directed to produce all the books of accounts pertaining to the relevant assessment orders within a period of fifteen days from the date of receipt of a copy of this order. On such production, the respondent shall decide the matters without being influenced by the report of the Enforcement Wing officials and after affording an opportunity of personal hearing to the petitioner within a period of four weeks thereafter.

7. Accordingly, all these writ petitions are disposed of. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Commercial Tax Officer (ADDL)(ST),
Thoothukudi-III Circle,
Thoothukudi.

+1cc to Mr.A.Chandrasekaran, Advocate Sr.No.76455
+1cc to Spl.Government Pleader Sr.No.76576

RSB

VB/RP/SAR1/30.08.2018/3P/4C

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