BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.12138 of 2018

and

W.M.P.(MD).No.11054 of 2018

M/s.Vivek Computers,
represented by its Proprietor
Mr.U.Vinod Kumar,
No.164, P.N.Complex,
Big Bazzar Street,
Trichy - 620 008. .. Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by the Secretary to the Government,
Department of Commercial Taxes,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
3rd Floor, Ezhilagam,
Chennai - 600 008.

3.The Assistant Commissioner,
Mailamchandai-1, Assessment Circle,
Trichy -20. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 3rd respondent relating to the impugned order in TN No.33283421079/2013-14, dated 04.05.2018 and quash the same and further direct the 3rd respondent to pass a fresh order as per the direction of this Court in the case of JKM Graphics Solution Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in (2017) 99 VST 343 (Mad) and after considering reply of the petitioner on merits.

For Petitioner : Mr.R.Sridhar
For Respondents : Mr.D.Muruganandham, Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the assessment order in TN No.33283421079/2013-14, dated 04.05.2018 and for a direction to the third respondent to assess the tax, in the light of the decision of this Court in JKM Graphics Solution Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai, reported in (2017) 99 VST 343 (Mad) and also its reply dated 22.03.2018.

2. The petitioner is a registered dealer under the TNVAT Act and also CST Act. The petitioner had declared total and taxable turnover of Rs.10,79,68,693/- for the assessment year 2013-14. The 3rd respondent issued a notice on 04.01.2018 stating that based on the department website report on verification of annexure-II of the selling dealers concerned, it has been noticed that the petitioner has made undisclosed purchase of Rs.94,37,556/- and therefore, proposed to levy tax and penalty over the same. On 22.03.2018 the petitioner submitted his reply along with the relevant documents and also declaration letters obtained from the two major suppliers with regard to the total quantum of purchase made from them for the concerned assessment year. Without considering the said reply and without providing an opportunity of personal hearing, the third respondent passed the impugned order dated 04.05.2018, directing the appellant to pay additional tax with penalty. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the third respondent has passed the impugned order without properly considering the reply given by the petitioner and without following the guidelines laid down by this Court in the decision of M/s.JKM Graphics Solutions Private Limited, cited supra. He would further submit that though the petitioner sought for an opportunity of personal hearing by his reply dated 22.03.2018, the third respondent has failed to provide the same. Thus, he prayed to set aside the impugned order.

4. The learned Additional Government Pleader appearing for the respondents would state that the petitioner has got an efficacious alternative remedy and without availing the same, he is before this Court. He would further submit that though an opportunity of personal hearing was given to the petitioner, he has not availed the same and therefore, now he cannot agitate the same before this Court. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. It is seen from the record that on 04.01.2018, the third respondent had issued a notice proposing to levy additional tax and penalty for suppression of purchases to the value of Rs.94,37,556/-, for which the petitioner has given his reply on 22.03.2018. In the

meantime, on 15.03.2018, the third respondent has issued another notice directing the petitioner to file objections, if any and to avail an opportunity of personal hearing within a period of seven days from the date of receipt of notice. The notice, dated 15.03.2018, reads as follows:

> "Your attention is invited to the above. A notice were already issued to you on 04.01.2018, but you had not filed any objection till date, even though the notice was served to you and sufficient time was granted. Therefore, continuous seeking of time to produce those records, without any reasonable cause, showed that you unduly dragged on finalizing the revisonary proceedings, in order to avoid payment of tax. Therefore, in order to follow the principles of natural justice you are hereby given an opportunity to file your written objections, if any, against the proposed revision of assessment along with relevant records before the undersigned in the office of the Assistant Commissioner (ST), Mailamchandal-1 assessment Circle at Kajamalai, Trichy -20 within 7 days (seven) from the date of receipt of this notice and are also given further opportunity for personal hearing to represent your case in writing either in person or through your authorized representative, if you so desire. It may also be taken note of that if you fail to avail the opportunity in this regard, order revision orders will be passed under the TNVAT Act 2006 as proposed above without any further notice."

7. As stated earlier, the petitioner has given his reply on 22.03.2018. In that reply, the petitioner has specifically requested the third respondent to provide an opportunity of personal hearing. In the impugned order, it is stated that the reply sent by the petitioner, dated 22.03.2018, was received on only 03.04.2018. The impugned order was passed on 04.05.2018. From the said fact, it is clear that before passing the impugned order, the petitioner has submitted his reply and sought for personal hearing. When that be so, the third respondent ought to have given an opportunity of personal hearing before passing the impugned order. In similar circumstances, a Hon'ble Division Bench of this Court also in a decision reported in 33 VST 333 (Tvl.SRC Projects Private Limited Vs. the Commissioner of Commercial Taxes), has categorically held that when request is made for a personal hearing, the Assessing Officer is bound to afford such an opportunity. Further, in the instant case, the Assessing Officer has admitted that the dealer has submitted his reply, but has ignored to note the specific request for personal hearing. This error would vitiate the impugned order of assessment.

8. In view of the above, the impugned order is set aside and the matter is remanded to the third respondent / Assessing Officer

for fresh consideration, in the light of the decision of M/s.JKM Graphics Solutions Private Limited, cited supra. The Assessing Officer is directed to fix a date for personal hearing within a period of 15 days from the date of receipt of a copy of this order. The Assessing Officer is further directed to hear the petitioner, peruse the documents and allow the petitioner to peruse the documents and invoice wise purchase list of the other end dealers stated to be available with the Assessing Officer and if necessary, give reasonable time for the petitioner to submit additional objection and thereafter, complete the assessment by passing a reasoned order on merits and in accordance with law. The said order shall be passed within a period of 30 days from the date on which the personal hearing is conducted.

9.This Writ Petition stands allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-I)

To
1.The Secretary to the Government,
Department of Commercial Taxes,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
3rd Floor, Ezhilagam,
Chennai - 600 008.

3.The Assistant Commissioner,
Mailamchandai-1, Assessment Circle,
Trichy -20.

+1cc to Mr.R.Sridhar, Advocate SR No.78928
+1cc to Special Government Pleader, SR No.78952

W.P(MD)No.12138 of 2018

DS(NM)/SKN/SAR 1/24.09.18/2P/7C