BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 23.04.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.20277 & 20278 of 2014
and
M.P(MD)Nos.1 & 1 of 2014

D.S.Balachandran ... Petitioner in both petitions

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Assistant Commissioner (CT) - III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001. ... Respondents in both petitions

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for records pertaining to the impugned proceedings of the second respondent in TIN.33195241479/2008-09 dated 26.11.2014 and TIN.33195241479/2006-2007 dated 26.11.2014 respectively and quash the same and consequently, direct the second respondent to re-do the assessment afresh, after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

These writ petitions have been filed, seeking to quash the impugned proceedings of the second respondent in TIN. 33195241479/2008-09 dated 26.11.2014 and TIN.33195241479/2006-2007 dated 26.11.2014 respectively and consequently, direct the second respondent to re-do the assessment afresh, after giving adequate opportunity to the petitioner.

2. The petitioner is a dealer in iron scraps and assessed to tax under the Tamil Nadu Value Added Tax Act, 2006, vide Tin.33195241479. The petitioner filed returns for the assessment years 2006-2007; 2007-2008; 2008-2009; 2009-2010; 2010-2011. The second respondent issued a Pre-Revision Notice dated 19.08.2014,

pursuant to the surprise inspection conducted between 29.08.2013 and 02.09.2013 for suppression of taxable turnover and for levying penalty under Section 27(3)(b) of the TNVAT Act. Originally, five proposals were sent, but, while passing orders, based on the web-site report and other materials, additional proposals were also included and the same were confirmed. Complaining non-service of additional proposals on the petitioner and deprivation of an opportunity to file an objection with regard to the same, the petitioner is before this Court.

3. Per contra, the learned Government Advocate appearing for the respondents would submit that originally, five proposals were sent. Subsequently, certain further defects were identified from the returns and mismatch from the web-site report and those materials were readily available at the office of the respondents for being supplied to the petitioner. In spite of sending notice for filing objection and for final hearing, the petitioner did not appear for personal hearing. Since the petitioner failed to appear before the authorities, the materials could not be served on him. Therefore, the additional proposals were also confirmed along with the other proposals sent to him, by pre-revision notice, dated 19.08.2014. On examination of the returns and the data available on the web-site, the respondents unearthed large scale evasion of tax. It is not a secret and that the dealer was not aware or taken by surprise of the entire details. The records with regard to the additional proposals were well within his knowledge. Therefore, the order confirming the additional proposals would not amount to violation of principles of natural justice. On such submission, he prays for dismissal of these writ petitions.

4. I have considered the rival submissions made on either side.

5. From the perusal of the materials placed before this Court, it is seen that the pre-revision notice was issued by the second respondent on 19.08.2014, in which, five proposals were sent. Thereafter, the second respondent could unearth large scale evasion of tax and retrieved data from the web-site. Therefore, it necessitated the respondents to raise additional proposals. In such event, the proper procedure is to issue revised proposals incorporating all the issues and call for objections from the dealer. The authorities cannot wait for the dealer to come and ask for materials without there being any proposals served. But, in the instant case, while confirming proposals, the second respondent has also confirmed additional proposals and levied tax to the tune of Rs.8,55,299/-. In the counter affidavit also, it is categorically stated that a notice of hearing was given referring to the issuance of evasion of tax. But, specific proposals have not been served on the petitioner before confirming the additional proposals. Imposing tax on uncommunicated proposals certainly would amount to violation of principles of natural justice.

6. This Court, while dealing with a similar matter in the case of Intek Engineers vs. Assistant Commissioner (CT)(Mad) reported in [2017] 105 VST 318 (Mad), has held that the Assessing Officer, having pointed out two proposals, added two more grounds while completing the assessment proceedings and in Paragraph No.4, it was observed as under:

> "Having admitted the mistake, the respondent could not have proceeded further, without making proper proposal, he proposed to proceed with the assessment on totally different lines. This mistake committed by the respondent goes to the root of the matter, affecting the very orders of assessment. This is sufficient to hold that the impugned orders are bad in law, as they have exceeded the proposal in the revision notices, dated November 14, 2016, and without due application of mind."

7. In view of the judgment, the impugned orders passed by the second respondent in TIN.33195241479/2008-09 dated 26.11.2014 and TIN.33195241479/2006-2007 dated 26.11.2014 respectively are set aside and the matters are remanded back to the second respondent for fresh consideration. The second respondent is directed to issue fresh notice incorporating all the proposals along with materials relied on by him and call for objections from the petitioner, within a period of 15 days from the date of receipt of a copy of this order and on service of such pre-revision notice, the petitioner shall submit his objections within a period of 15 days thereafter. The second respondent is directed to pass orders after affording a personal hearing to the petitioner within a period of 15 days from the date of receipt of objections from the petitioner.

8. These writ petitions are allowed to the extent indicated above. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner
of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Assistant Commissioner (CT) - III,
Commercial Tax Building,
Sub-Collector's Office Road,
Dindigul - 624 001.

+1cc to Special Government Pleader, SR.No. 63367

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and
M.P(MD)Nos.1 & 1 of 2014
23.04.2018

rm
JM/KKR/SAR 2/17.05.2018/4P/4C