WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition(MD)Nos.13808 and 13809 of 2018
and
W.M.P.(MD).Nos.12541 to 12544 of 2018

Tvl. Murugesa Dairy Foods
represented by its Proprietor
R.V.G.Murugesan,
No.191, Dharapuram Main Road,
Oddanchatram.

... Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT)-II,
Palani.

... Respondent in both W.Ps.

Common Prayer: Writ Petitions are 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 TIN:33395361940/2012-2013 and 2013-2014 dated 23.06.2016 respectively and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner in both W.Ps. : Mr.A.Chandrasekaran
For Respondent in both W.Ps. : Mr.A.Muthukaruppan
Additional Govt. Pleader

C O M M O N O R D E R

The petitioner is the dealer in Butter and Ghee and an assessee under TNVAT Act. For the assessment year 2012-2013, the petitioner reported a total and taxable turnover of Rs.4,99,54,775/- and Rs.1,87,27,200/- respectively and paid the tax. For the assessment year 2013-2014, the petitioner reported a total and taxable turnover of Rs.6,16,75,690/- and Rs.2,39,88,390/- respectively and paid the tax. Pursuant to the scrutiny of the assessment, certain defects were found and notice dated 19.03.2015 was issued. The defects were based on the web report. Since the petitioner was not well and was undergoing treatment, he did not file any objection to the same and the respondent passed a final assessment order dated 11.05.2015. In the writ petitions filed by the petitioner in W.P.(MD).No.8796 of 2015, this Court, by order

https://hcservices.ecourts.gov.in/hcservices/

dated 29.06.2015, had set aside the final order and remanded the matter back to the respondent for the purpose of giving one more opportunity to the petitioner to submit his objection along with the records. It appears that pursuant to the direction, the petitioner submitted his objection dated 07.07.2015 to the respondent. On receipt of the objection, the respondent issued the summons dated 23.09.2015 and 13.05.2016. It is the contention of the petitioner that he had appeared along with the documentary evidence before the respondent, but without considering the objection, final order dated 23.062016 was passed. Aggrieved over the impugned order dated 23.06.2016, on the ground of principles of natural justice, the petitioner is before this Court.

2. Per contra, the learned Additional Government Pleader appearing for the respondent vehemently contended that the respondent complain of violation of principles of natural justice and therefore, ample opportunity was given to the petitioner. Pursuant to the order of this Court dated 29.06.2015, two summons were sent and opportunity was given to the petitioner. Yet he had not filed objection and therefore, the impugned order is passed. Hence, it is the contention of the learned Additional Government Pleader that the writ petitions are not sustainable and the petitioner has to approach the appellate authority and the writ petitions have to be dismissed.

3. Heard both sides.

4. On a perusal of the impugned order dated 23.06.2016, it is seen that two summons, as contended by the learned Additional Government Pleader, dated 23.09.2015 and 13.05.2016 were issued to the petitioner and hearing date is fixed as 09.10.2015 and 27.05.2016 respectively. But it is not clear as to whether the petitioner appeared or not. The impugned order says that the dealer did not turn up and did not produce the connected documents and on the other hand, the learned counsel for the petitioner would contend that he had submitted an objection dated 07.07.2015 to the respondent. On receipt of the objection only the summons were issued. In all probabilities, when a direction is issued by this Court, at the instance of the petitioner, the petitioner would have availed the opportunity given to him by this Court. In that event, contention that he had submitted his objection on 07.07.2015 may be true. On instructions, the learned Additional Government Pleader also submit that the objection was received. However, the assessing officer while passing final orders, does not refer the receipt of the objection and has not discussed any of the points raised in the objection filed by the petitioner. The details obtained from the website was relied on in the order passed. It is well settled that when the details were obtained from the web site and there is a mismatch, a duty is cast upon the assessing authority to verify the details and to find out the correct facts, after conducting an enquiry. In the instant case, it is seen that the orders came to be passed on the ground that the sales and purchases were not accounted

https://hcservices.ecourts.gov.in/hcservices/

for during verification of website sales and purchase from other dealer's Annexures-I & II. The exercise of conducting an enquiry and finding out the correctness of the details was not done by the respondent. Further, the objections made by the petitioner was also not considered. In fact, there is not even a reference as to the receipt of objections. Apart from all these, a vague order without setting out the the reasons came to be passed.

5. The learned counsel for the petitioner would also submit that the petitioner has deposited a sum of Rs.20,00,000/- in two instalments towards the tax and seek for one more opportunity to produce the accounts once again before the respondent for consideration.

6. In view of the submissions made and that the fact remains the objections were not considered, this Court is inclined to set aside the impugned order and remand the matter back to the respondent for passing orders afresh in compliance with the principles of natural justice.

7. Accordingly, the impugned order dated 23.06.2016 is set aside and the matter is remanded to the respondent. The petitioner is directed to produce the accounts and other documentary evidence along with another copy of objection filed by him, dated 07.07.2015. The respondent is directed to conduct an enquiry as per the judgment of this Court in *Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai* reported in *2017 (99) VST 343* and afford an opportunity to the petitioner to produce all the accounts and personal hearing and thereafter pass orders on merits. These writ petitions are disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/
Assistant Registrar (T&P)

/True copy/

Sub Assistant Registrar

To
The Assistant Commissioner,
Commercial Tax-II,
Palani.

+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.72160
+1cc to M/s.Special Government Pleader,SR.No.72650

W.P.(MD)Nos.13808 and 13809 of 2018
10.07.2018

AKV
KK/SV/SAR-4/23.07.2018/3P-4C/

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/