BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.07.2018
CORAM
THE HONOURABLE **MR.JUSTICE M.GOVINDARAJ**

W.P.(MD)No.15760 of 2018
and
W.M.P.(MD)No.14118 of 2018

Tvl.Jeyamaruthi Wood Industry,
Represented by its Managing Partner,
Parbath.HA.Patel,
133/2-B, Kamaraj Nagar,
Avaniapuram, Madurai. ... Petitioner

Vs.

The Assistant Commissioner(ST)(FAC),
Thirupparankundram Circle,
Madurai-20. ... Respondent

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN:33866232887/2015-16 dated 27.03.2018 and quash the same as invalid, illegal and against the Principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.A.Muthu Karuppan
Additional Government Pleader

O R D E R

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as “the TNVAT Act”], doing business in manufacturing wooden products, and he filed monthly returns for the total turnover and taxable turnover for the assessment year 2015-16 and it was deemed to have been completed on 31.10.2016. The Central Enforcement Wing Officers conducted an inspection under Section 65 of the TNVAT Act and reported certain discrepancies with regard to the stock maintained by the petitioner. It is found that there is some stock variation. Therefore, a notice was issued by the respondent on 27.02.2018. The petitioner filed a detailed objection to the notice on 14.03.2018. Thereafter, on 27.03.2018, the final order, impugned in this writ petition, came to be passed. Challenging the impugned order, the petitioner is before this Court.

2. The learned counsel appearing for the petitioner would contend that the method adopted in calculating the stock and the finding of the stock variation are not proper. The Central

Enforcement Wing Officers have adopted a wrong procedure and reported discrepancies. But, without verifying the correctness of the discrepancies reported by the Central Enforcement Wing Officers, the assessing authority mechanically issued the notice accepting the reports. Further, without considering the objection filed by the petitioner dated 14.03.2018, i.e., within the period of thirteen days from the date of receipt of the notice, without providing any opportunity of personal hearing, the final order came to be passed. Therefore, the order passed by the assessing authority is in violation of principles of natural justice and accordingly, the petitioner sought for disposal of the writ petition.

3. Controverting the facts, the learned Additional Government Pleader would contend that the stock variation has been properly explained by the assessing authority and then only, he has arrived at the finding based on the inspection report and therefore, the order passed by the assessing authority is very much sustainable. Hence, the writ petition is liable to be dismissed.

4. I have given my consideration to the arguments made on both sides.

5. It is an admitted case that the revision notice was issued pursuant to the inspection conducted by the Central Enforcement Wing Officers. When a report is forwarded to the assessing authority, a duty is cast upon him to verify the correctness of the accounts and the discrepancies pointed out by the inspection team. He has to independently take a decision as to whether there are defects and omissions or discrepancies in the accounts and the returns submitted by the dealer. If he comes to a conclusion that there exists some defects or discrepancies or suppression of sale or stock variation, as the case may be, he has to formulate the proposals independently and forward to the dealer calling for objections.

6. In the instant case, no such verification appears to have been done. The revision notice states that the inspection conducted by the Central Enforcement Wing Officers relating the discrepancies, is not from the verification of accounts submitted by the petitioner. Within the time limit granted by the assessing authority, the petitioner has submitted his objection to the same. In the objections, it is clearly stated that discrepancies pointed out by the Central Enforcement Wing Officers were not admitted and that the stock difference in terms of money value by adopting trading account method is not correct as held by the Sales Tax Appellate Tribunal (AB-Madurai) in some other cases.

7. The learned counsel appearing for the petitioner has also given various citations in support of his case. Further, he has also relied on certain judgment of the Division Bench of this Court to substantiate his contention.

8. A reading of the impugned order shows that the assessing authority was conscious of the judgment cited by the petitioner, particularly, on the aspect of independent application of mind. It is observed in the impugned order that the petitioner submitted the judgment to the point that the assessing authority shall not be carried away by the report of the third party agency or the Enforcement Wing Officers.

9. It is further observed that the petitioner accepted the defects before the inspection team, but for the inspection, stock difference would not come to light. There is no discussion on the method adopted by the Enforcement Wing Officers on the basis of money value or the reasons for rejecting the objections made by the petitioner. Therefore, it is very clear that the order passed by the respondent is a non speaking order and is not supported by any reasons.

10. Another aspect to be seen in this matter is that the opportunity of personal hearing. The Head of the Department issued a circular laid down the procedure to be followed by the assessing authority, pursuant to the recommendations of Justice.Mr.G.Ramanujam Committee. Instructions issued in the circular mandate opportunity of personal hearing. The said circular is binding on the assessing authority. The assessing authority shall afford an opportunity of personal hearing, whether it is asked for by the dealer or not. Thus, it is mandatory to fix a date for personal hearing and hear the parties on their objections or explanations whatsoever it may be.

11. In the instant case, no such opportunity is given. This Court also repeatedly directs the assessing authority to afford an opportunity of personal hearing citing the judgment of the Division Bench of this Court in a batch of Writ Appeals in ***W.A (MD).Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018. Without any doubt, the order passed by the respondent is unsustainable for non-application of mind, lack of reasons and for violation of principles of natural justice.

12. In the result, the impugned order passed in TIN:33866232887/2015-16 dated 27.03.2018 is set aside and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to consider all the judgments mentioned in the objections and afford an opportunity of personal hearing to the petitioner. The respondent shall also record all the reasons for arriving at conclusion, while passing final orders.

13. The writ petition is disposed of with the above observations. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Assistant Commissioner(ST)(FAC),
Thirupparankundram Circle,
Madurai-20.

+1cc to Mr.A.Chandrasekaran, Advocate Sr.No.74996

SM

VB/KAK/SAR3/24.08.2018/4P/3C

W.P.(MD)No.15760 of 2018
25.07.2018