BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 25.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) No.15763 of 2018 and
W.M.P.(MD).No.14122 of 2018

Tvl.Sri Kailash Chemicals
rep. by its Partner,
Mr.Bajranglal Chowdhury
No.126-A/2, New Colony
Tuticorin-628 003. ... Petitioner

vs.

The State Tax Officer (Main)
Tuticorin-III. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to the impugned proceedings passed by the respondent in TIN No.33655921972/2011-12, dated 23.05.2018 and quash the same as the same is illegal, arbitrary and without jurisdiction as the same is barred by limitation as per the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also in view of the judicial decisions rendered by this Honourable High court in the case of M.U.A Arumugaperumal and Sons Vs. Additional Commercial Tax Officer (FAC), Srivilliputhur reported in 16 VST 188 [2008] and also in the case of Tvl.India Cycle Stores Vs. The Assistant Commissioner (CT), Bazaar Assessment Circle, Salem in W.P.No.32201 of 2017, dated 23.01.2018 and also to pass such further or other orders as this Honourable High Court may deem fit and proper.

For Petitioner : Mr.K.Srinivasan
For Respondent : Mr.A.MuthuKaruppan
Additional Government Pleader

O R D E R

Challenge in this writ petition is to the assessment order passed by the respondent, in proceedings in TIN No.33655921972/2011-12, dated 23.05.2018 and quash the same.

2.The petitioner is a dealer registered under the TNVAT Act, 2006. He filed return for the assessment year 2011-12 and it was accepted and an assessment order was passed on 30.10.2012. Thereafter, a revision notice, dated 19.04.2018 was issued by the respondent on the ground of mismatch turn over. Since the petitioner did not file any objection, the proposals were confirmed and finally, an order came to be passed on 23.05.2018. Challenging the order dated 23.05.2018, the petitioner is before this Court.

3.According to the petitioner, the order passed by the respondent is hit by limitation, as action was not taken within 5 years period, as per the unamended provision.

4.Section 27 of TNVAT Act, 2006 reads as under:

> "**27.Assessment of escaped turnover and wrong availment of input tax credit:**
>
> (1) (a) Where, for any reason, the whole or any part of the turnover of business of a dealer has escaped assessment to tax, the assessing authority may, subject to the provisions of sub-section (3), at any time within a period of six years from the date of assessment, determine to the best of its judgment the turnover which has escaped assessment and assess the tax payable on such turnover after making such enquiry as it may consider necessary.
>
> (b)Where, for any reason, the whole or any part of the turnover of business of a dealer has been assessed at a rate lower than the rate at which it is assessable, the assessing authority may, at any time within a period of five years from the date of assessment, reassess the tax due after making such enquiry as it may consider necessary."

5.The above provision was amended with effect from 19.06.2012. Once the act is amended, then any assessment passed after 19.06.2012, the action can be taken within 6 years. In the instant case, original assessment order was passed on 30.10.2012. Revision notice was issued on 19.04.2018, which means that the action has been initiated within 6 years. Therefore, the contention that it is hit by limitation is not sustainable.

6.However, on perusal of the impugned order, it is seen that an opportunity of personal hearing was not given. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the **Justice Ramanujam** Committee, it is mandatory to give an opportunity of personal hearing, whether it is escaped or not by the dealer. Whereas in the instant case, the respondent has not fixed any date for personal hearing, much less communicate the same to the dealer. Sofar as non-production of personal hearing is concerned, the order passed by the authority is bad in law and violation of principles of natural Justice.

7.In this regard A Honourable 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, has held as under:-

Denial of Personal hearing:

"10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee.

11.The Hon'ble Supreme Court in *Swami Devi Dayal Hospital and Dental College Vs. The Union of India and others [2013 (10) Scale 608]* observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision."

8.In view of the above decision, the impugned order, passed by the respondent in TIN No.33655921972/2011-12, dated 23.05.2018, is set aside and this matter is remanded back to the respondent for fresh consideration. The petitioner shall submit his objections within a period of 15 days from the date of receipt of copy of this order. On such objections being filed, the respondent is directed to dispose of the matter within a period of one month, after affording an opportunity of personal hearing to the petitioner.

9.Accordingly, this writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar (III)

/True Copy/

Sub Assistant Registrar (CS-III)

To:

The State Tax Officer (Main) Tuticorin-III.

+ 1 CC TO Mr.K.SRINIVASAN, ADVOCATE IN SR No. 75507

VS
TE/RP/SAR-3 : 24/08/2018 : 3P/3C W.P.(MD) No.15763 of 2018

25.07.2018

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