BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.16447 of 2018
and
W.M.P(MD)No.14595 of 2018

M/s.Naveen Electricals & Hardwares,
represented by its
Proprietor,
Mohamed Sulthan,
1DE, State Bank Colony,
Madurai Main Road,
Edamalaipattipudur,
Trichy - 620 012. ... Petitioner

Vs.

The Commercial Tax Officer,
Srirangam Assessment Circle,
Commercial Tax Buildings,
Trichy. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records in TIN:33923464183/2016-17, dated 27.02.2018 issued by the respondent and quash the same as arbitrary, illegal and without jurisdiction and direct the respondent to pass order afresh after affording opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

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ORDER

This writ petition has been filed seeking a writ of Certiorarified Mandamus to call for the records in TIN:33923464183/2016-17, dated 27.02.2018 issued by the respondent and quash the same as arbitrary, illegal and without jurisdiction and direct the respondent to pass order afresh after affording opportunity of personal hearing within such time as may be directed by this Court.

2. Mrs.J.Padmavathi Devi, learned Special Government Pleader

takes notice for the respondent.

3. By consent, the writ petition is taken up for final disposal.

4. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act'] and doing electrical and hardware business. He submitted his returns for the assessment year 2016-17. On 21.01.2016 and 22.01.2016, the Enforcement Wing officials have conducted surprise inspection in the place of business of the petitioner and found that certain defects. On the basis of the report submitted by the Enforcement Wing officials, a pre-revision notice was issued by the respondent on 10.11.2017. The petitioner submitted his reply on 28.12.2017. Thereafter, the respondent passed orders on 27.02.2018 considering the objections.

5. The learned Counsel for the petitioner would point out that Input Tax Credit reversals were not accepted on the fact that the original invoices were not produced before the Enforcement Wing officials at the time of surprise inspection, nor they were enclosed in the objections submitted by the petitioner. Further, the petitioner having given sworn statement before the Enforcement Wing officials, he cannot take a different stand while filing the objections. Therefore, the proposals sent by the respondent were confirmed by way of an order passed in the above proceedings.

6. The learned Counsel for the petitioner would contend that in the objections submitted by him itself, he has clearly stated that they are ready to produce the original invoices for verification before the respondent as the original invoices cannot be sent along with the objections. Further, it is well settled that the statement given before the Enforcement Wing officials will not amount to admission and that the payment of tax also is not voluntary.

7. Per contra, the learned Special Government Pleader appearing for the respondent would vehemently contend that the original invoices pertaining to the assessment order shall be in possession of the petitioner at his place of business and they should have been produced before the Enforcement Wing officials at the time of inspection conducted at the place of business. Having failed to produce the same for verification before the inspecting officials and failure to produce the same along with the objections, would clearly show that the petitioner has indulged in evading of tax and made a wrongful claim of Input Tax Credit. Therefore, considering all these aspects, the respondent has passed the order, which is sustainable in law and does not require any interference.

8. I have considered the submissions made by both the parties.

9. Admittedly, the petitioner while filing his objections, has given an undertaking that he will produce the original invoices

before the respondent. It is well settled that before deciding the issue, an opportunity of personal hearing shall be given. Had the respondent called for production of the original invoices as promised by the petitioner, he would have produced them and a decision on the basis of materials could have been taken.

10. Further, it is also seen that the purchase difference is arrived at on the basis of web report. In such circumstances, it is all the more necessary to verify the defects after providing the material documents to the dealer in a personal hearing. Only because a statement is obtained from the petitioner, it cannot be said that they have admitted the defects pointed out by the Enforcement Wing officials at the time of inspection.

11. Presumably, the collection of cheque towards a portion of tax amount could have been on compulsion exerted on the dealers. Therefore, the observation that the petitioner cannot approbate and reprobate after giving sworn statement before the Enforcement Wing officials, is not correct and sustainable. The surprise inspection is conducted only to find out the defects and discrepancies and evasion of tax made by the dealers. Once surprise inspection is conducted and report is submitted, it is incumbent on the assessing authority to verify the defects pointed out by the Enforcement Wing officials on the basis of accounts submitted by the dealers. Thereafter, the assessing authority should independently formulate proposals and call for objections.

12. The observation made by the assessing authority would lead us to infer that he has taken the report submitted by the Enforcement Wing officials as gospel truth and passed orders being influenced by the same. Such an order is not fair and sustainable.

13. In such circumstances, the impugned order passed by the respondent in TIN:33923464183/2016-17, dated 27.02.2018, is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to produce the original invoices as demanded by the respondent forthwith and after providing ample opportunity of personal hearing to the petitioner to put forward the objections or explanation, the respondent shall pass final orders on merits uninfluenced by the report of the Enforcement Wing officials.

14. In the result, this writ petition is allowed as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/
Assistant Registrar(CO)

/True copy/

Sub Assistant Registrar (CS-I)

To
The Commercial Tax Officer,
Srirangam Assessment Circle,
Commercial Tax Buildings,
Trichy.

+1cc to Mr.S.Karunakar, Advocate, SR.No. 75244
+1cc to M/s.Special Government Pleader,SR.No. 75359

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RSB
KK/SKN RSK/SAR-1/09.08.2018/4P-4C/