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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 11.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)No.4371 of 2017
and
W.M.P(MD)No.3509 of 2017

Tvl.Sri Meenakshi Pipe Corporation Firm,
represented by its Partner,
R.Vengatesan ... Petitioner

Vs.

1. The Additional Chief Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai - 600 005.

2. The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Buildings,
Dr.Thangaraj Salai, Madurai - 625 020. ... Respondents

**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 pertaining to the impugned proceedings of the second respondent in TIN:33894983074/2014-15, dated 15.02.2017 and quash the same as it is passed against law, wholly without jurisdiction and contrary to the judgment of this Court in Infinite Wholesale Limited v. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai reported in (2015) 82 VST 457.

For Petitioner : Mr.R.Narayanan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

**ORDER**

The petitioner is a dealer in PVC Pipes and Fittings and registered under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. He filed monthly returns for the taxable turn over. For the assessment year 2014-15, a revision notice was issued by the second respondent on 15.12.2016 calling for objections within fifteen days from the date of receipt of the said notice. The petitioner has filed his reply on 26.12.2016, but the final orders were passed on 15.02.2017. Aggrieved over the impugned order, the petitioner is before this Court.

2. According to the learned Counsel for the petitioner, the case is based on mismatch found in the accounts on the basis of Input Tax Credit proposed to be reversed. The assessing authority while passing orders, has found that the dealer had filed his objections along with the bill copies for the mismatch, but he had

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not produced the Annexure-II to the details of the seller to verify the bills. Further, the assessing officer had found fault with the dealer for not producing the evidence at the time of inspection itself and rejected the contentions of the petitioner. Therefore, the impugned order is contrary to law and violative of principles of natural justuce.

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3. Controverting the contentions of the learned Counsel for the petitioner, the learned Special Government Pleader appearing for the respondents would submit that all the evidence were available with the dealer himself and in spite of the opportunity given to them, they have not produced the details and they have deliberately suppressed the materials with an ulterior motive to evade the tax and therefore, the order passed by the assessing authority is justifiable.

4. I have heard rival contentions.

5. From a simple perusal of the impugned order, it shows that the objection was filed by the petitioner along with the copies of the bills for mismatch. In the case of mismatch, it is well settled by 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, that the assessing authority shall independently apply his mind before arriving at the proposals regarding the defects. It is expected on him to conduct an intra-departmental enquiry to verify the correctness of the transactions with the other end dealers. But, in the instant case, the assessing authority found fault with the petitioner for not having produced the bills for other transactions with respect to his sellers for the verification. In fact, without furnishing the materials to the dealer, calling for objections by itself, is violative of principles of natural justice as the dealer is deprived of effectively defending his case.

6. Secondly, the rejection is based on the ground that the dealer has not produced the evidence at the time of inspection itself, which means that any amount of evidence produced after the date of inspection will not be considered. The assessing authority shall approach the issues with open mind and consider the objections filed by the dealers and must also give an opportunity of personal hearing to explain their sides, but none of these procedures have been followed by the second respondent in the instant case.

7. In such circumstances, this Court is inclined to set aside the impugned order passed by the second respondent in TIN:33894983074/2014-15, dated 15.02.2017 and accordingly, the same is set aside and the matter is remitted back to the second respondent for fresh consideration. The second respondent is directed to complete the proceedings within a period of two months from the date of receipt of a copy of this order and pass final orders following the ratio laid down by this Court in Tvl.JKM

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Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343 and also in conformity with the procedures laid down by the respondent Department. It is made clear that an opportunity of personal hearing shall be given to the petitioner/dealer before passing final orders.

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8. Accordingly, this writ petition is disposed of. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Additional Chief Secretary/
   Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk, Chennai - 600 005.

2. The Assistant Commissioner (CT),
   Nethaji Road Assessment Circle,
   Commercial Tax Buildings,
   Dr.Thangaraj Salai, Madurai - 625 020.

+1CC to Mr.R.Narayanan, Advocate, SR.No.72591

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