BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2018

DELIVERED ON : 29.10.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.20016 of 2018

and

W.M.P.(MD)No.17798 of 2018

Tvl. South Indian Green Cardamom
Company Limited,
Rep. by its
Manager / Authorized Signatory,
Mohamed Abdul Kader : Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Uthamapalayam Assessment Circle,
Commercial Taxes Office,
11-3/105, Main Bazaar,
Opposite to Chettiar Chatram,
Uthamapalayam,
Theni District - 625 533. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari calling for records pertaining to the impugned proceedings of the second respondent in VAT/33935102362/2009-10 ante-dated as 31.05.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.D.Muruganantham,
Additional Government Pleader

ORDER

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This writ petition is filed challenging the impugned proceedings of the second respondent in VAT/33935102362/2009-10, dated 31.05.2018, vide which, revised assessment order came to be passed.

2. The petitioner before this Court is a Company, involved in the sale of Cardamom and an assessee on the file of the second respondent herein. For the subject assessment year, ie., 2009-10, they had filed their returns, in time, which was also accepted and approved. Such being so, based on an inspection report, the second respondent has issued a notice dated 16.09.2015, citing some discrepancies, thereby, proposed to revise the assessment. According to the petitioner, though they had filed their reply cum objections dated 04.12.2015 & 07.12.2015, without considering the same, the order impugned came to be passed.

3. Learned Counsel for the petitioner would submit that they are challenging the order impugned on more than one grounds. Firstly, the transaction involved in the present case is a inter state transaction and therefore, the second respondent ought to have passed the impugned proceedings under CST Act, instead of passing under TNVAT Act.

4. The second point is that in the notice of the respondents dated 16.09.2015, there exist some mismatch, ie., there are double entries in almost all bills. Therefore, the petitioner has made a detailed representation dated 04.12.2015, enclosing the actual bills. But, in the impugned order dated 31.05.2018, this aspect has not at all been dealt with. Relying upon an unreported decision of this Court in W.P.(MD)No.2576 of 2009, dated 25.08.2009, learned Counsel for the petitioner submitted that this is nothing but violation of principles of natural justice. If there is a violation of principles of natural justice, an aggrieved person can very well approach the Courts, even though appeal remedy is available, which is a settled position in law and therefore, he prayed for interference.

5. Learned Additional Government Pleader, on the other hand, would submit that the footing of the petitioner's contention is that there is a difference between the actual bills and the entry made in the official proceedings. This is nothing but a factual dispute. Factual disputes have to be agitated before the appropriate authority, viz., the appellate authority, if the petitioner is really aggrieved. Here, in the case on hand, Appellate Deputy Commissioner of State Taxes (South), Madurai, is the appellate authority. Instead of filing a regular appeal, the petitioner has preferred the present writ petition. He would further submit that followed by the notice dated 16.09.2015, the authorities had issued another urgent notice dated 24.05.2018, granting an opportunity of personal hearing to the petitioner. Therefore, it cannot be said that principles of natural justice has been violated and thence, he prays for dismissal.

6. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

7. Perusal of record shows that the petitioner was issued with an urgent notice dated 24.05.2018, directing them to appear for personal hearing on 30.05.2018. But, it is not stated by any of the parties that whether such an opportunity was availed by the petitioner. Even in the impugned order dated 31.05.2018, there is no whisper as to the same.

8. Be that as it may, on a perusal of the petitioner's reply dated 04.12.2015, it is seen that the petitioner has raised some contentions regarding mismatch, ie., double entry, at the end of the Department. But, no where in the impugned order dated 31.05.2018, the same was discussed. For better appreciation, the operative portion of the order impugned is extracted thus:

> *"The objections are carefully considered. During the year 2009-10, a sum of Rs.1,30,69,048/- representing the value of goods moved through checkpost was not declared in their monthly returns. In the documents furnished by the dealers, the Consignor and Consignee and registration numbers noted in the document are dealers at cumbum with their registration number and dealers at Kerala with their Registration numbers respectively. Even if the transactions were made auction purpose, there is no need to mention the Registration numbers of Tamil Nadu dealers and therefore, the proposal made based on the Checkpost movement is correct."*

9. If an aggrieved person raises certain contention in his/her reply, the authorities, while passing orders, have to specifically deal with the same in the manner known to law. In other words, the authority has to give his/her finding on all the grounds raised by the aggrieved persons. While answering the contentions, the authorities, exercising quasi-judicial powers, have to record the reasons for such holding. The Hon'ble Supreme Court in the case of ***Mahabir Prasad Santosh Kumar vs. State of U.P.***, reported in ***(1970) 1 SCC 764*** held that merely giving an opportunity of hearing is not enough and further pointed out that where the order is subject to appeal, the necessity to record reason is even greater. Recording of reasons in support of a decision on a disputed claim ensure that the decision is not a result of caprice, whim or fancy, but was arrived at after considering the relevant law and that the decision was just.

10. Admittedly, factual disputes have to necessarily be agitated before the appropriate authority, as rightly contended by the learned Additional Government Pleader. But, the order impugned suffers from violation of principles of natural justice. Therefore, the order impugned is liable to be set aside and accordingly, the same is set aside. The matter is remitted back to the file of the second respondent for fresh consideration, while reserving all the

grounds raised by the petitioner herein to raise before the authority.

11. Since the service of pre-revision notice dated 16.09.2015 as well as the reply of the petitioner dated 04.12.2015 are not in dispute, the second respondent is directed to fix a specific date for hearing, within a period of two weeks from the date of receipt of this order and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent and put forth their contentions and after hearing the petitioner, the respondent shall pass appropriate reasoned orders, purely on merits, touching all the contentions raised by the petitioner, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the second respondent shall record the same and pass orders, in accordance with law.

12. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS-II)

To

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,Ezhilagam, Chepauk,
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2.The Commercial Tax Officer,
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Opposite to Chettiar Chatram,
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+1 CC To MR.B.ROOBAN, Advocate SR. NO. 92521
+1 CC TO The Special Government Pleader SR.NO. 93407

W.P.(MD)No.20016 of 2018
and
W.M.P.(MD)No.17798 of 2018
29.10.2018

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