BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.10.2018
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.20864 of 2018
and
W.M.P.(MD).No.18644 of 2018

M/s.Sashwath Constructions (P) Ltd.,
represented by its Director A.Chandramouli,
28, Shanthi Niketan,
Melakkal Main Road,
Kochadai, Madurai. .... Petitioner

Vs.

The Commercial Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Buildings,
Madurai -20. .... Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN 33875162438/2011-12, dated 27.03.2018 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and to direct the respondent to pass assessment order afresh after affording an opportunity of being heard to the petitioner by considering his reply dated 16.02.2018 within a stipulated time.

For Petitioner : Mr.S.Karunakar

For respondent : Mr.R.Murugan,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the revised assessment order, dated 27.03.2018, passed by the respondent for the assessment year 2011-12.

2. The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006. He has been regularly filing returns. While so, based on the inspection conducted on 29.07.2015, the respondent issued a show cause notice, dated 02.02.2018, pointing out certain discrepancies in the profit and loss account. On 16.02.2018, the petitioner has given a letter, seeking time till 15.04.2018 to verify the records and to file his objections. Even after receipt of the same, the respondent has issued a notice dated 21.02.2018 directing the petitioner to appear before the respondent on 05.03.2018 for personal hearing. According

to the petitioner, on his behalf, his accountant appeared before the respondent and requested time till 15.04.2018. But, the respondent hurriedly passed the impugned order, dated 27.03.2018, without rejecting the said representation and without any independent application of mind. Hence, the petitioner is before this Court challenging the said order.

3. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the records carefully.

4. Admittedly, a show cause notice was issued by the respondent on 02.02.2018, for which the petitioner has sent a letter, dated 16.02.2018, requesting time till 15.04.2018 for filing objections. The respondent ought to have considered the said letter of the petitioner and either accepted or rejected the same. On 21.02.2018 the respondent has issued notice for personal hearing. The petitioner's accountant appeared before the respondent and sought time till 15.04.2018 expressing difficulties in getting the records. But, the respondent has hurriedly passed the impugned order without considering the said request. When the petitioner sent a letter seeking time till 15.04.2018, the respondent ought to have considered the same and either accepted or rejected the same.

5. It is also seen that the respondent has simply confirmed the proposal, by the impugned order dated 27.03.2018, stating as follows:

> "As in reference 1st cited, notice was issued to the dealer calling for objection if any to the proposal. The dealer requested personal hearing in reference 2nd cited. As per their request, personal hearing was granted. But the dealer failed to attend even though sufficient time has been granted. Hence, I confirm the proposal and revise the order accordingly for the year 2011-12."

6. It clearly shows that the first respondent, without independent application of his mind, solely guided by external factors and in particular, the VAT Audit report, has passed the impugned order.

7. In the decision in Madras Granites (P) Ltd., Vs. C.T.O., Arisipalayam Circle ((2006) 146 STC 642), a Division Bench of this Court has clearly stated the manner in which the Assessing Officer has to function. The relevant portion is extracted hereunder:

> "It is well settled that the Assessing Officer is a quasi judicial authority and in exercising his quasi judicial function of completing the assessment, he is not bound by the instructions or directions of the higher authorities. However, it

is found that in both the matters, the Assessing Officer has acted on the basis of the directions of the higher authority in completing the assessment. We hold that the assessments are not sustainable in law."

8. In the decision in Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri, reported in (2015) 81 VST 560, a learned Single Judge of this Court has held as follows:

> "10.At the risk of repetition, this Court states that the Assessing Officer, under the Act, has been conferred powers to independently consider the matter, and, at best, the information furnished by the Enforcement Wing, or Inspecting Officer, could be considered to be in the nature of a first information, and based on such information, if the Assessing Officer proposes to issue a show cause notice, then he is required to call for explanation from the dealer, and then, it is incumbent upon the Assessing Officer to give his/her own independent reasons, and to pass orders, either accepting the case of the dealer, or rejecting it. However, this basic principle, as to how the assessment has to be made, has not been followed in the instant cases, and since the assessment has been made by the respondent / Assessing Officer, blindly accepting the proposal sent by the Deputy Commissioner (CT Enforcement South, the impugned orders have to be held to be not sustainable, calling for interference."

9. The above decisions are squarely applicable to the facts of this case. In this case, admittedly, the petitioner has not submitted his objections. Even then, the respondent ought to have independently considered the proposals and justified the same. But, the respondent, in contravention of the said decisions cited supra, has passed the impugned order. Therefore, on this ground , the impugned order is liable to be set aside.

10. In view of the above, the impugned order, dated 27.03.2018, passed by the respondent is set aside and the matter is remanded back to the file of the respondent. The petitioner is directed to file his objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of such objections, the respondent is directed to provide an opportunity of personal hearing to the petitioner and then, to pass reasoned orders on merits and in accordance with law, within a period of two weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records.

11.This Writ Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Commercial Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Buildings,
Madurai -20.

+1CC to Mr.S.Karunakar, Advocate, SR.No.88452

W.P(MD)No.20864 of 2018
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GCG
ES/SKN/RSK/SAR 1/22.11.2018/4P/3C