BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.24837 of 2016

and

W.M.P(MD)No.17955 of 2016

M/s.Priya Poly Bags,
represented by its
Partner,
Murugesh,
No.280/3, Teachers Colony,
Karur - 4. ... Petitioner

Vs.

1. The Assistant Commissioner (CT),
   Karur (East), Karur.

2. M/s.Sevenseas Polymers (P) Ltd.,
   represented by its
   Managing Director,
   Arunthangam,
   No.25, T.V.R.Complex,
   Chinna Andan Kovil Road,
   Karur - 1. ... 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 of the respondent in TIN No.33193763102/2009-10 and quash the order dated 08.12.2016 as it is unlawful and in violation of principles of natural justice and further direct the respondent to consider the objections in all perspective manner on its merits by affording an opportunity for cross-examination of the second respondent and thereafter, to pass appropriate order in accordance with law in terms of the decision of this Court reported in 9 VST 478.

For Petitioner : Mr.M.V.Manibabu

For Respondents : Mr.S.Dhayalan
Government Advocate for R.1
Mr.K.Suresh for R.2

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ORDER

The petitioner is a registered dealer in poly bags under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act']. He submitted his returns for the assessment year 2009-10 as per the

Act. Thereafter, in a surprise inspection conducted by the Enforcement Wing officials on 26.09.2015, 28.09.2015 and 28.10.2015, it was reported that there was a suppression of sales in purchase. On the basis of the report submitted by the Enforcement Wing officials, a revision notice was issued under Section 27 of the TNVAT Act. The petitioner has submitted his objections and sought for sales invoices made by the second respondent and also sought to cross-examine the second respondent. In spite of repeated requests, the opportunity of cross-examining the second respondent was not given to the petitioner. Ultimately, the impugned order in TIN No.33193763102/2009-10, dated 08.12.2016, came to be passed, wherein it is stated that in the sworn statement given before the inspecting officials on 02.08.2015, the petitioner has categorically admitted his purchase and therefore, the opportunity to cross-examination was not required and imposed the penalty for the suppression of sales. Challenging the order, the petitioner is before this Court.

2. Controverting the said submissions, the learned Government Advocate appearing for the first respondent would vehemently contend that the opportunity of personal hearing was given to the petitioner on several occasions and the petitioner even though appeared for personal hearing, failed to avail the said opportunity and therefore, the final order came to be passed. Further, against the said order, an appeal remedy is available to the petitioner. However, without exhausting the appeal remedy, the petitioner has hastened to approach this Court and therefore, this writ petition is liable to be dismissed in view of alternative remedy of appeal available to the petitioner.

3. Whereas the learned Counsel for the second respondent would submit that there was a criminal case in C.C.No.11 of 2013 decided by the learned Judicial Magistrate No.I, Karur, on 23.03.2018. The documents relied thereon would go to show that all the purchase invoices were marked as documents in Ex.P.4 - series numbering 15. The petitioner cannot state that he was not given any opportunity and therefore, there is no violation of principles of natural justice and it is only open to the petitioner to file an appeal against the order. Therefore, the writ petition is liable to be dismissed.

4. I have heard the rival contentions.

5. On perusal of the impugned order, it is stated that the petitioner filed his objections. In the objections, he has also stated that he has sought for the documents relied on by the inspecting officials for having effected purchase from the second respondent to the tune of Rs.79,45,600/- during the year 2009-10. However, the first respondent proceeded to pass orders on the pretext that the petitioner has admitted in his sworn deposition given on 02.08.2015 to the inspecting officials of the suppression

of sales and therefore, as per the ratio of the judgment reported in 43 STC 525, a dealer cannot approbate and reprobate of his own statement and overruled the objections raised by the petitioner and confirmed the proposals issued by him.

6. But, from the materials available before this Court, it is seen that in the sworn statement given by the petitioner before the inspecting officials that he had no transactions with the second respondent from 2009-10 onwards. In respect of the alleged purchases, there was a criminal case pending between the petitioner and the second respondent before the learned Judicial Magistrate No.I, Karur. It does not show that he has admitted the suppression of sales. Even assuming that the petitioner is aware of purchase invoices issued by the second respondent, when a request is made to the assessing officer to provide the same and to afford an opportunity of cross-examining the said seller, it is incumbent on the assessing officer to provide such an opportunity.

7. In the instant case, from the judgment of the criminal Court in C.C.No.11 of 2013, dated 23.03.2018, it is seen that the purchase invoices were marked as Ex.P.4 - series numbering 15. To prove the genuineness of these invoices, the first respondent ought to have afforded an opportunity of cross-examining the second respondent. It cannot be shut on the basis of the deposition given by the petitioner before the Enforcement Wing officials.

8. It has been categorically stated by various judgments of this Court that when a request is made to cross-examine the selling dealer of the sale transactions alleged, an opportunity must be given. In the instant case, the first respondent has deprived the petitioner of the opportunity by stating that the petitioner cannot approbate and reprobate after giving sworn statement before the Enforcement Wing officials admitting the defects. Such course is certainly violative of principles of natural justice as it denies effective defence to the petitioner to disprove the case.

9. Now that, these documents are very much available in view of the fact that they were marked as documents in Ex.P.4 - series numbering 15, before the learned Judicial Magistrate No.I, Karur in C.C.No.11 of 2013. In such an event, it is open to the first respondent to cross-examine the second respondent and permit the petitioner to cross-examine to establish his stand. The learned Counsel for the second respondent also expresses the willingness of his client to face the same.

10. Insofar as it denied the opportunity of cross-examining the second respondent, this Court is inclined to set aside the impugned order passed by the first respondent and accordingly, the impugned order passed by the first respondent in TIN

No.33193763102/2009-10, dated 08.12.2016, is set aside and the matter is remanded back to the first respondent for fresh consideration. The first respondent is directed to furnish all these purchase invoices, viz., Ex.P.4 - series numbering 15 and other basic records relied on by him, which are readily available, to the petitioner and permit the petitioner to cross-examine the second respondent in order to prove his case and thereafter, pass orders on merits and in accordance with law.

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

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Assistant Commissioner (CT),
Karur (East),
Karur.

+1cc to Mr.M.V.Manibabu, Advocate Sr.No.74477
+1cc to Mr.K.Suresh, Advocate Sr.No.74984
+1cc to Spl.Government Pleader Sr.No.74554

RSB

VB/MMS/SAR3/11.08.2018/4P/5C

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