BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.04.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.10599 of 2019
and
W.M.P.(MD) No.8128 of 2019

Tvl.Vino Trading,
Rep., by its Proprietor
C.Paramaisware, aged about 48 years,
W/o G.Chandrasekaran,
No.102, Yuvaraj Bhavanam,
North Street, Palanganatham,
Madurai - 625 003 ... 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 State Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN: 33645165717/2014-15 dated 28.02.2019 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader

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O R D E R

The instant writ petition has been filed challenging the Assessment Order dated 28.02.2019 passed by the second respondent in TIN: 33645165717 for the Assessment year 2014-15.

2. It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. It is his case that he has been regularly filing monthly returns under

the TN VAT Act, 2006 and has also been paying the tax regularly and the respondent has also accepted his monthly returns under Section 22(2) of the TN VAT Act, 2006.

3. According to the petitioner, pursuant to the inspection conducted at the petitioner's business premises on 19.09.2016, the second respondent issued a notice dated 02.12.2016 alleging that the petitioner has suppressed the purchases for the Assessment Year 2014-15 to the tune of Rs.2,61,385/- and proposed to levy tax on the estimated sales value of the same and also proposed to levy penalty under section 27(3) of the TN VAT Act, 2006.

4. According to the petitioner, since the said defence is due to the inadvertent omission in reporting of purchase, the petitioner paid the entire tax of Rs.14,428/- and penalty of Rs.7,214/- totalling a sum of Rs.21,642/- by cheque on 09.02.2017. It is the case of the petitioner that after a lapse of two years, the second respondent once again issued another notice dated 03.01.2019, based on the inspection carried out by the Enforcement Wing Officials of the respondent on 19.09.2016 alleging once again, that there was suppression of purchases made by the petitioner in its earlier returns filed for the Assessment Year 2014-15 and alleging that the other end seller has also not reported the sales effected to the petitioner under the second pre-revision notice dated 03.01.2019 and the second respondent proposed to reverse the input tax credit that was claimed under the original returns.

5. According to the petitioner, in the pre-revision notice dated 03.01.2019, the second respondent has alleged that the petitioner has reported less purchase to the tune of Rs.2,61,385/- with that of the seller at the other end dealer and also alleged that he has reported excess purchase turnover to the tune of Rs.2,09,32,970/- which is totally contrary to each other and highly unjustified and illogical.

6. It is the case of the petitioner that he personally met the second respondent and denied the allegations made in the pre-revision notice dated 03.01.2019 and requested her to provide with the copy of the alleged invoice and copies of the annexures filed by the other end dealer and also to conduct a detailed intra-departmental enquiry. But according to the petitioner without giving adequate opportunity to the petitioner to raise all objections available to him under law and without affording personal hearing to the petitioner, the second respondent has passed the impugned assessment order dated 28.02.2019 by total non-application of mind by observing that the petitioner had sent a reply. But in fact, no reply was sent by him. In such circumstances, on the ground of violation of principles of natural justice and on the ground that the second respondent has passed the impugned assessment order by total non-application of mind, the instant writ petition has been filed.

7. Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

8. This Court has perused and examined the impugned Assessment Order. The second respondent proposed to revise the assessment of the petitioner for the Assessment year 2014-15 based on an inspection carried out by their Enforcement Wing officials on 19.09.2016, wherein according to the second respondent, it was found that the petitioner has suppressed purchases effected from the other end seller and had claimed excess input tax credit. According to the second respondent, due to the suppression of purchase and claim of excess input tax credit, the same will have to be reversed. Admittedly, no reply was sent by the petitioner to the pre-revision notice issued by the second respondent on 03.01.2019 proposing the revision of assessment for the assessment year 2014-15.

9. It is the case of the petitioner that there is no suppression of purchase and they have not claimed any excess input tax credit. It is also their case that the second respondent has not conducted any intra-departmental enquiry nor have they cross verified the sales and purchases through the other end buyers. It is also their case that no personal hearing was afforded to the petitioner in the assessment proceedings.

10. As seen from the impugned assessment order, it is evidently clear that no personal hearing was afforded to the petitioner. Even though no reply was sent by the petitioner to the pre-revision notice dated 03.01.2019 due to total non-application of mind which has been observed by the second respondent in the last paragraph of the assessment order that,-

> *"Objections, if any, to the above proposals may be filed in writing in this office in person within 15 days from the date of receipt of this notice, failing which final orders will be passed without further notice."*

11. He further submitted that the copy of purchase bills filed by the dealers are verified and found to be in order and that they are acceptable except in the following cases. But, in fact, no reply was sent by the petitioner to the pre-revision notice dated 03.01.2019. It is settled law that the Assessment Officer, namely, the second respondent will have to independently assess the liability of the petitioner to the payment of tax as well as penalty in the revision of assessment proceedings and he cannot personally accept the web report of the department without holding a separate enquiry and without cross verifying the sales from the other end sellers.

12. In the instant case, neither personal hearing was afforded to the petitioner nor an independent enquiry was held by cross verifying the sales effected by the other end seller to the purchaser based on which a pre-revision notice dated 03.01.2019 was

sent by the second respondent proposing to revise the assessment of the petitioner for the assessment year 2014-15. From the above, it is clear that the second respondent has violated the principles of natural justice and has also not applied his mind before passing the impugned assessment order.

13. In the result, the impugned assessment order dated 28.02.2019 passed by the second respondent in TIN: 33645165717 for the assessment year 2014-15 is hereby quashed and this matter is remanded back to the second respondent for fresh consideration and the second respondent shall after granting adequate opportunity to the petitioner to raise all objections available to him under law, including permitting him to file a reply to the pre-revision notice dated 03.01.2019 and also afford him the right of personal hearing, shall pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order.

14. With the aforesaid directions, the **Writ Petition is disposed of.** No costs. Consequently, connected W.M.P.(MD) No.8128 of 2019 is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar(CS)

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To

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

2) The State Tax Officer,
Madurai Rural (South) Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai – 625 020

+1 CC to M/s.SPL GP (SR-64638[F] dated 30/04/2019)

Order made in
W.P.(MD).No.10599 of 2019

ES/09.05.2019/4P/4C