BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.3791 of 2019
and
W.M.P(MD)No.2970 of 2019

Tvl.S.K.Medicals,
Represented by its Proprietor,
S.Kuthalingam. ... 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 Deputy Commercial Tax Officer,
Shengottai Assessment Circle,
Commercial Tax Office,
No.126, Main Road, Shengottah,
Tirunelveli District. 627 809. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the 2nd respondent in TIN:33185701798/2015-16 dated 29.05.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.N.Shanmugaselvam, Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the assessment order dated 29.05.2018 passed in TIN No.33185701798/2015-16.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act 2006. According to him, the second respondent issued two pre revision notices, one dated 11.01.2017,and another dated 04.05.2017, under Section 27 of the Tamil Nadu Value Added Tax Act 2006, proposing to revise the earlier assessment for the assessment year 2015-16. The main basis for issuing the pre revision notices by the second respondent is that the petitioner has suppressed purchases and there is mismatch in the reporting of sales and purchases between the petitioner and the other end seller. According to the petitioner, the pre revision notices are bereft of details relating to the alleged suppressed purchases. According to the petitioner, a detailed reply was sent by the petitioner on 17.04.2017 to the first pre revision notice dated 11.01.2017, requesting the second respondent to produce return copies of the other end sellers and other connected documents. According to the petitioner, despite the said request, the second respondent has once again issued another pre revision notice dated 04.05.2017, wherein without giving any breakup details or any particulars, the second respondent has once again proposed to revise the assessment on the ground that certain other purchases amounting to Rs.8,25,658/- was also suppressed by the petitioner. Thereafter, the second respondent passed the impugned assessment order. Aggrieved by the assessment order dated 29.05.2018, passed by the second respondent, the instant Writ Petition has been filed.

3.Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents.

4.The learned counsel for the petitioner drew the attention of this Court to the two pre revision notices, one dated 11.01.2017 and another dated 04.05.2017. He pointed out that on receipt of the first pre revision notice, the petitioner sent a reply dated 17.04.2017, requesting the second respondent to produce copies of the returns submitted by the other end sellers along with related records. According to him, despite the receipt of the said reply, the second respondent has not produced the returns of the other end sellers as well as other connected records. According to him, insofar as the second pre revision notice dated 04.05.2017 is concerned, even though, the second respondent has disclosed that there is purchase suppression to the extent of Rs.8,25,658/- by the petitioner, neither the breakup details have been given nor the names of the other end sellers, from whom the petitioner has alledgedly purchased were disclosed. According to the learned counsel for the petitioner, this was the reason for the petitioner not having sent any reply to the second pre revision notice dated 04.05.2017. It is the case of the petitioner that before granting adequate opportunity to the petitioner, the assessment order has been passed. According to the learned counsel for the petitioner, without knowing the breakup details or the names of other end sellers, it will be difficult for the petitioner to disprove the claim of the second respondent. Therefore, according to the learned counsel for the petitioner, the second respondent has violated the principles of natural justice by not affording adequate opportunity to the petitioner before the assessment proceedings.

5.Per contra, the learned Additional Government Pleader for the respondent would submit that the petitioner was afforded personal hearing during the assessment proceedings. Further, it is his case that despite receipt of the second pre revision notice dated

04.05.2017, the petitioner has not sent any reply to the same and full details have already been given in the both the pre revision notices. Further, according to the learned Additional Government Pleader, the petitioner instead of exhausting the statutory alternate appellate remedy, has filed this Writ Petition, which is not maintainable.

6.Discussion:

This Court has perused both the pre revision notices issued under Section 27 of the Tamil Nadu Value Added Tax act 2006, on 11.01.2017 and other dated 05.05.2017. In the pre revision notice dated 11.01.2017, the names of the other end sellers have been disclosed. The request made by the petitioner in his reply dated 17.04.2017, has not been considered. While passing the impugned assessment order, the reasons for rejection of the said request has also not been given in the impugned assessment order. Insofar as the second pre revision notice dated 04.05.2017, is concerned, the second respondent has not given break up details relating to the alleged purchases made by the petitioner from the other end sellers to the extent of a sum of Rs.8,25,658/-.

7. For the forgoing reasons, it is evident that adequate opportunity has not been afforded to the petitioner. It is settled law that the petitioner will have to be afforded adequate opportunity before an assessment order is passed against him.

8.In the result, this Writ Petition is allowed and the impugned assessment order dated 29.05.2018, is hereby quashed and the second respondent shall issue a fresh pre revision notice to the petitioner under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, within a period of two weeks from the date of receipt of a copy of this order and the petitioner shall send a reply within a period of two weeks from the date of receipt of fresh pre revision notice and after giving sufficient opportunity to the petitioner, including granting the right of personal hearing, the second respondent shall pass final orders in accordance with law, within a period of 8 weeks thereafter. No costs, consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

Sub Assistant Registrar(CS)

To

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

2.The Deputy Commercial Tax Officer,
Shengottai Assessment Circle,
Commercial Tax Office,
No.126, Main Road, Shengottah,
Tirunelveli District. 627 809.

+1cc to M/s.Special Government Pleader,SR.No. 57392,57943

W.P.(MD)No.3791 of 2019
and
W.M.P(MD)No.2970 of 2019

27.03.2019

DAS
KK/SAR/16.04.2019/ 4P- 4C