BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.6453 of 2019
and
W.M.P.[MD]Nos.5156 & 5157 of 2019

Rajesh Kumar : Petitioner

Vs.

1.The Appellate Deputy Commissioner,
Commercial Tax Office,
Aruppukottai Road,
Sivagami Puram,
Virudhunagar - 626 607.

2.The Commercial Tax Officer,
Ground Floor,
No.50/52, Jawahar Street,
Karaikudi - 630 001. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records connected with the impugned order passed by the second respondent in Pa.Sa.No.33815483056 (2014-15) dated 06.02.2018 and quash the same.

For Petitioner : Mr.K.K.Kannan

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The instant Writ Petition has been filed challenging the impugned order dated 06.02.2018, passed by the second respondent in Pa.Sa.No.33815483056 (2014-15).

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as ''TNVAT Act”]. According to him, the second respondent proposed to revise the assessment under Section 27 of the TNVAT Act, 2006, by the pre-revision notice dated 25.04.2016 for the assessment year 2014-15. Thereafter, the second respondent passed the impugned assessment order dated 29.12.2016 assessing the tax payable by the petitioner at Rs.1,85,558/- and penalty payable at Rs.2,78,337/- for the assessment year 2014-15. On receipt of the assessment order dated 29.12.2016, the petitioner has paid the tax amount of Rs.1,85,558/- and has challenged only the levy of penalty of Rs.2,78,337/- in the instant writ petition.

3.Heard Mr.K.K.Kannan, learned Counsel for the petitioner an Mr.M.Jeyakumar, learned Additional Government Pleader for the respondents.

4.According to the learned Counsel for the petitioner, no personal hearing was afforded to the petitioner during the assessment proceedings by the second respondent. He relied upon the judgment of this Court in the case of ***G.V.Cotton Mills (P)Ltd., Vs. The Assistant Commissioner (CT), Coimbatore*** *in* ***W.A.Nos.234 to 240 of 2015*** and submitted that even if the petitioner does not ask for the right of personal hearing, the second respondent ought to have granted the petitioner the said right. But, in the instant case, it has not been done so. Further, the learned Counsel for the petitioner contends that admittedly, the tax amount has been paid and only the penalty amount is disputed.

5.Per contra, the learned Additional Government Pleader for the respondents would submit that adequate opportunity was granted to the petitioner to raise all objections available to him under law to the pre-revision notice issued by the respondents under Section 27 of the TNVAT Act, 2006. Further, there is an alternate appellate remedy available to the petitioner and without exhausting the same, the petitioner has filed the instant Writ Petition.

Discussion:

6.Admittedly, in the instant case, no personal hearing was afforded to the petitioner as seen from the assessment order dated 06.02.2018. It is settled law as per the decision relied upon by the learned Counsel for the petitioner, in the case of ***G.V.Cotton Mills*** referred to supra, that it is mandatory for the second respondent to afford personal hearing to a dealer who challenges any revision of assessment proceedings initiated by the second respondent under Section 27 of the TNVAT Act, 2006.

7.Further, in the instant case, the tax amount as assessed by the assessing officer under the assessment order dated 06.02.2018 has been paid and only the penalty amount is disputed by the petitioner. In view of the settled law, the impugned order dated 06.02.2018 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law and the second respondent shall after affording sufficient opportunity to the petitioner including granting him the right of personal hearing shall pass final orders within a period of eight [8] weeks from the date of receipt of a copy of this order.

8.With the aforesaid directions, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1.The Appellate Deputy Commissioner,
Commercial Tax Office,
Aruppukottai Road,
Sivagami Puram,
Virudhunagar – 626 607.

2.The Commercial Tax Officer,
Ground Floor,
No.50/52, Jawahar Street,
Karaikudi – 630 001.

+1 CC to M/s.K.K.KANNAN, Advocate (SR-57697[F] dated 29/03/2019)

+1 CC to M/s.SPL GP (SR-57765[F] dated 29/03/2019)

ORDER MADE IN
W.P.[MD]No.6453 of 2019
28.03.2019

CS: (03/06/2019) 3P 5C