BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 04.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.6795 of 2019
and
W.M.P.(MD).5433 of 2019

M/s.Steel Park,
Represented by its Partner
A.S.Hasan Adbulcader
59-a, North Main Road,
Valliyoor. ... Petitioner

Vs

The Commercial Tax Officer,
Nanguneri Assessment Circle,
Commercial Taxes Buildings,
Nanguneri. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No. 33445602521/2012-13, dated 10.08.2017, issued by the respondent and quash the same is wholly without jurisdiction, being contrary to the judgement of this Hon'ble Court reported in the case of The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai Vs Infiniti Wholesale Limited Vs. Reported in (2017) 99 VST 430 and direct the respondent to conduct an enquiry with other end dealers as contemplated under Section 27 of the TNVAT Act 2006 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of writ petitions in the case of M/s.JKM Solutions Private Limited reported in (2017) 99 VST 343 (Mad) including the opportunity of personal hearing to the petitioner.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant writ petition has been filed challenging the assessment order dated 10.08.2017 passed by the respondent in TIN No.33445602521/2012-2013.

2. It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act and he has been filing monthly returns regularly, which has also been accepted by the respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act, But according to them, based on the scrutiny of records and assessment file, the respondent issued pre revision notice dated 07.04.2017, proposing to revise the assessment for the assessment year 2012-2013, for the following reasons :

a) Non reporting of sales to the petitioner by other end sellers

b) the petitioner has effected purchases from registration certificate cancel dealer.

c) the petitioner has effected purchases in excess of reported sales to the petitioner by the other end sellers.

3. It is the case of the petitioner that to the pre revision notice dated 07.04.2017, issued by the respondent for the assessment year 2012-2013 and due to partner of the petitioner firm suffering from severe viral fever and was not able to move from bed and was admitted in the hospital for a long period of time, he was unable to send a reply to the pre revision notice, dated 07.04.2017. But according to the petitioner, without affording adequate opportunity to the petitioner the respondent passed the impugned assessment order, dated 10.08.2017 revising the earlier accepted assessment.

4. It is the case of the petitioner that all the purchases effected by them from other end sellers were duly reported to the respondent and there is no suppression of purchases conducted by them. According to the petitioner for non-reporting of sales by the other end sellers, the petitioner cannot be made liable. According to the petitioner, the respondent under the impugned assessment order has violated the principles of natural justice by not affording adequate opportunity to the petitioner to raise all objections available to him under law. Under these circumstances, the instant writ petition has been filed, challenging the impugned assessment order.

5. Heard Mr.S.Karunakar, the learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondent.

6. The learned counsel for the petitioner drew the attention of this Court to the following decisions:

a) ***M/s.JKM Graphics Solutions Private Limited-vs- Commerical Tax Officer, Vepery Assessment Circle Chennai***, reported in ***2017 (99) VST 343 (Mad).***

b) ***The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chenni -vs- Infiniti Wholesale Limited***, reported in ***(2017) 99 VST 430***

c) ***Althaf Shoes (P) Ltd vs.Assistant Commissioner (CT) Valluvarkottam Assessment Circle, Chennai*** reported in ***(2012) 50 VST 179.***

Relying on the aforesaid decisions, the learned counsel for the petitioner would submit that for the fault of the other end sellers, the petitioner who is a purchaser cannot be penalized. The learned counsel for the petitioner would further submit that under the impugned assessment order, no personal hearing was afforded to the petitioner.

7. Per Contra, the learned Additional Government Pleader appearing for the respondent would submit that alternate appellate statutory remedy is available to the petitioner as against the assessment order. Since there has been suppression by the other end sellers, according to him input tax credit claimed by the petitioner had to be reversed.

8.This Court has examined the impugned assessment order and as seen from the assessment order, it is clear that no personal hearing was afforded to the petitioner which is mandatory as per settled law laid down by various decisions of this Court. Furthermore in the instant case, the petitioner has given sufficient reasons as to why he could not sent a reply to the pre revision notice, dated 07.04.2017. Further as already held by this Court in the case of ***The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai -vs- Infiniti Wholesale Limited***, reported in ***(2017) 99 VST 430*** and ***Althaf Shoes (P) Ltd vs.Assistant Commissioner (CT) Valluvarkottam Assessment Circle, Chennai*** reported in ***(2012) 50 VST 179*** referred to supra by the learned counsel for the petitioner, it is now settled law that for the fault of the other end sellers for not reporting the sales, the petitioner, cannot be held liable, as he has reported the purchases effected by him from the other end sellers.

9. For the foregoing reasons, this Court is of the considered view that the respondent has violated the principles of natural justice and has not passed the order in the light of the principles laid down by this Court in the case of ***The Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai -vs- Infiniti Wholesale Limited***, reported in ***(2017) 99 VST 430*** and ***M/s.JKM Graphics Solutions Private Limited-vs- Commerical Tax Officer, Vepery Assessment Circle Chennai***, reported in ***2017(99) VST 343 (Mad)*** and therefore, the impugned assessment order dated 10.08.2017 passed by the respondent in TIN No.33445602521 is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders in accordance with law after giving adequate opportunity to the petitioner including the right of personal hearing to raise all objections available to them under law within a period of eight weeks from the date of receipt of a copy of this Order. No Costs. Consequently connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/ True Copy /

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer,
Nanguneri Assessment Circle,
Commercial Taxes Buildings,
Nanguneri.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-59220[F] dated 05/04/2019)
+1 CC to M/s.SPL GP (SR-59570[F] dated 08/04/2019)

W.P.(MD)No.6795 of 2019
and
W.M.P.(MD).5433 of 2019
04.04.2019

ES/DS/23.04.2019/4P/4C