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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P. (MD) Nos.7877 of 2019

and

W.M.P. (MD) Nos.6233 of 2019

M/s.Raja Shoe Mart,
Represented by its Proprietor S.Syed Ibrahim,
Door No.7/197-A, Anna Salai,
Kodaikanal - 624 101

... Petitioner

Vs.,

The Deputy State Tax Officer,
Kodaikanal Assessment Circle,
Commercial Taxes Buildings,
Kodaikanal.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records in TIN 33765320075/2012-13 dated 24.12.2018 and quash the same as arbitrary illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his replies dated 16.11.2018 and 12.12.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of writ petition in the case of M/s.JKM Solutions Private Limited reported in 2017(99) VST 343 (Mad) including the opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner

: Mr.N.Sudalaimuthu

For Respondent

: Mr.M.Jeyakumar,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the assessment order dated 24.12.2018 passed in TIN 33765320075/ 2012-13 on the ground that the assessment order is arbitrary, illegal and against the principles of natural justice and the petitioner has also sought for a direction to furnish the records as sought for by the petitioner in his replies dated 16.11.2018 and 12.12.2018 and pass an assessment order afresh in the light of the guidelines enunciated in the decision of M/s.JKM Solutions Private Limited reported in 2017(99) VST 343 (Mad).

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. According to the petitioner, for the assessment year 2012-13, the



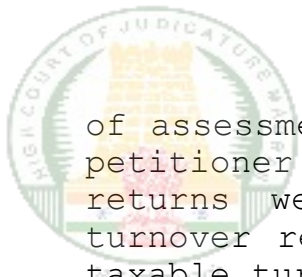
respondent accepted the returns filed by the petitioner under Section 22(2) of TN VAT Act 2006. Based on the verification of the department website, the respondent has issued a common notice dated 07.05.2018 to the petitioner for the Assessment years 2010-11 to 2015-16, wherein it was stated that the petitioner has not reported sales of branded foot wear at above Rs.200/-. Citing some taxable turn over, the respondent has directed the petitioner to pay tax of Rs.19,93,452/- as tax due for the Assessment years from 2010-11 to 2015-16.

3. According to the petitioner, on receipt of the common notice dated 07.05.2018, the petitioner has filed his reply dated 12.06.2018, wherein the petitioner has requested the respondent to furnish the details with break up which led them to make a revision of assessment. Thereafter, the petitioner had also filed a reply dated 10.06.2018, wherein it was again specifically informed that the particulars gathered from the other end dealers, which led the respondent to make an allegation of non-reporting of sales of branded foot wear at above Rs.200/- were not furnished, inspite of specific request.

4. According to the petitioner, by his reply dated 07.08.2018, he had once again raised objections as to the allegations of the non-reporting of sales of the branded foot wear at above Rs.200/-. According to the petitioner, along with the said reply, the petitioner has also submitted all the documents like account statements..etc. It is the case of the petitioner that he received another notice dated 28.08.2018 and according to him, the respondent in the said notice has mechanically directed the petitioner to submit several records without any basis.

5. According to the petitioner, the records included (Export documents, E-1 Sales) which according to the petitioner are irrelevant. By letter dated 13.09.2018, the petitioner requested the respondent to grant time to produce records for the Assessment years 2010-2011 to 2015-16. But, according to the petitioner, instead of granting time, the respondent issued a notice dated 18.09.2018 rejecting the request of the petitioner to grant further time but instead directed the petitioner to produce the records within seven (07) days.

6. According to the petitioner, he sent another reply dated 23.09.2018 to the respondent requesting them to furnish the break up details of the taxable turn over arrived by them. According to the petitioner, once again, the petitioner requested the respondent to extend the time for production of records till 30.09.2018. According to the petitioner, instead of granting sufficient time to produce the records, the respondent issued the revision of assessment notice dated 09.11.2018 wherein, it was stated that a detailed scrutiny of Business Intelligence Unit (BIU) revealed the difference in taxable turn over reported in their monthly returns with respect to the taxable turn over identified by the BIU. Hence, as per the revision



of assessment notice dated 09.11.2018, the exemption claimed by the petitioner on the turn over of Rs.17,53,605/- under the earlier returns were disallowed by the respondent and entire exempted turnover reported by the petitioner was proposed to be assessed as taxable turn over at 14.5%.

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7. On receipt of the revision of assessment notice dated 09.11.2018, the petitioner sent his objections by way of reply dated 16.11.2018 stating the following:-

- (a) Reported total and taxable turn over for the year 2012-13 is Rs.25,00,060/-and Rs.8,71,570/- whereas in the notice it was shown as Rs.26,25,175/-and Rs.8,71,570/- but for which no reason was given;
- (b) The petitioner had reported sales figure given in notice dated 09.11.2018 as Rs.17,53,605/- whereas the sales figures given in the monthly returns as Rs.16,28,490/- but for which no reason was given;
- (c) The exempted turn over was levied tax @ 14.5% without any justification which is not correct.
- (d) Requested to furnish the break up details (BIU report) so as to enable the petitioner to file a detailed reply.

8. It is admitted by the petitioner that on receiving the reply dated 16.11.2018, the respondent had issued another notice of personal hearing dated 03.12.2018. According to the petitioner, on receipt of the personal hearing notice, he sent a reply dated 12.12.2018 by stating that in the absence of breakup details and clarification on adoption of different figures in their own proceedings, the opportunity of personal hearing will not yield fruitful results. According to the petitioner, he therefore requested the respondent to furnish all the details and clarifications by his replies dated 20.09.2018 and 07.12.2018 and requested the respondent to fix the personal hearing on a different date. According to the petitioner, without furnishing all the details and clarifications sought for by him, the respondent has passed the impugned assessment order dated 24.12.2018 which was received by the petitioner on 03.01.2019.

9. It is the case of the petitioner that the respondent has arbitrarily, illegally and against the principles of natural justice has passed the impugned assessment order dated 24.12.2018. In such circumstances, the instant writ petition has been filed.

10. Heard Mr.N.Sudalaimuthu, learned counsel or the petitioner and MR.M.Jeyakumar, learned Additional Government Pleader accepts notice for the respondents.

11. This Court has perused and examined the impugned assessment order. The objections raised by the petitioner for the revision of assessment notice dated 09.11.2018 as seen from the reply dated 16.11.2018 are as follows:-

- (a) Reported total and taxable turn over for the year



2012-13 is Rs.25,00,060/ and Rs.8,71,570/- whereas in the notice, it was shown as Rs.26,25,175 and Rs.8,71,570/- for which no reason was given;

(b) The petitioner has reported sales figures given in notice dated 09.11.2018 as Rs.17,53,605/- whereas sales figures given in monthly returns as Rs.16,28,490/- but for which no reason was given;

(c) The exempted turn over was levy tax at 14.5% without any justification which is not correct;

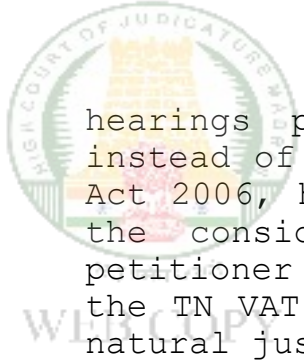
(d) Requested to furnish the break up details (BIU report) so as to enable the petitioner to send a detailed reply.

12. In the impugned assessment order, the respondent has extracted the reply dated 23.09.2018 sent by the petitioner to the respondent, wherein the petitioner has admitted that he was not able to maintain detailed accounts as prescribed under the TN VAT Act 2006 and it was also admitted that he has not issued any sales bills to his customers. It was also admitted by him that he has not filed the Tax returns. In the same letter, he has also promised the respondent that he shall furnish the available records before 30.09.2018. Further, it is observed in the impugned assessment order that vide notice dated 03.12.2018 personal hearing was intimated. But inspite of the receipt of the said notice, the dealer did not appear before the Assessing Authority for the said personal hearing.

13. It is also observed that repeated pleas were made by the petitioner for the postponement of personal hearing. The scanned copies of the dealer's letters requesting for the postponement of personal hearing have also been extracted by the respondent under the impugned Assessment Order. Even though common notice was issued by the respondent as early as on 07.05.2018 to the petitioner for the assessment years 2010-11 to 2015-16, wherein it was categorically stated that the petitioner had not reported sales of branded footwear at above Rs.200/- and the petitioner was directed to pay tax of Rs.19,93,952/- and only due to the delaying tactics adopted by the petitioner, the assessment order came to be passed on 24.12.2018.

14. It is also observed by the second respondent in the impugned Assessment order that only in cases where principles of natural justice have been violated or the order has been passed without jurisdiction, it is settled law that this Court can entertain a writ petition under Article 226 of the Constitution of India when there is a statutory appellate remedy available under the Act.

15. In the case on hand, the petitioner has been afforded adequate opportunities and has also been granted the right of personal hearing which he failed to utilize but instead of participating in the assessment proceedings by attending to the



hearings personally, after passing of the assessment order or instead of filing a statutory appeal under section 51 of the TN VAT Act 2006, has filed this writ petition which is not maintainable in the considered view of this Court. The only remedy for the petitioner is only to file a statutory appeal under Section 51 of the TN VAT Act, 2006 as there is no violation of the principles of natural justice by the respondent.

16. In the result, there is no merit in the Writ petition. Accordingly, the **Writ Petition is dismissed**. No costs. Consequently, connected W.M.P.(MD) Nos.6233 of 2019 is closed. Considering the fact that the petitioner has immediately approached this Court under Article 226 of the Constitution of India, this Court is of the considered view that he should be given an opportunity to file statutory appeal under Section 51 of the TN VAT Act, 2006. The petitioner is directed to file an appeal as against the assessment order dated 24.12.2018 before the appellate authority under Section 51 of the TN VAT Act within a period of two(02) weeks from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

To

The Deputy State Tax Officer,
Kodaikanal Assessment Circle,
Commercial Taxes Buildings,
Kodaikanal.

+1 CC to M/s.S.KARUNAKAR, Advocate SR-58520.

+1 CC to SPL GP SR-59138.

**Order made in
W.P. (MD) No.7877 of 2019
03.04.2019**

CS: (03/06/2019) 5P 4C