BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.8754 of 2017
and W.M.P.(MD)No.6681 of 2017

Tvl.Mohamed Agencies,
Represented by its Partner,
M.Kadhar Kani ... 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 Commercial Tax Officer,
West veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN No.33855024030/ 2015-16 dated 03.03.2017 and quash the same and pass such further or other orders as this Court.

For Petitioner : Mr.B.Rooban
for Mr.R.Veeramanikandan

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the order dated 03.03.2017 passed by the second respondent in TIN No.33855024030/ 2015-16.

2. It is a case of the petitioner that they are a registered dealer under the Tamilnadu Value Added Tax Act, 2006.

3. According to the petitioner, they have opted to pay

taxes under the compounding assessment under Section 3(4) of the TNVAT Act, 2006. It is their case that for the assessment year 2015-2016, without considering the reply, dated 18.01.2017, wherein they have asked the respondent to produce certain documents, the respondent has passed the impugned assessment order without furnishing those documents. It is a categorical stand of the petitioner is that there is no interstate purchase from Sri Sai Industries, Anandapur. Therefore, in the reply to the pre-revision notice, they had asked the respondent to produce documents pertaining to the alleged purchase made by the petitioner from Sri Sai Industries, Anandapur. Eventhough, a specific request has made, the respondent failed to furnish the documents sought for by the petitioner, but, instead went ahead and passed the impugned assessment order by the second respondent, dated 03.03.2017.

4. It is also a case of the petitioner is that they had failed to pay the monthly returns alongwith the compounding fees for belated filing along with interest. Aggrieved by the impugned assessment order, the instant Writ Petition has been filed.

5. Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondents.

6. The learned counsel for the petitioner drew the attention of this Court to the reply, dated 18.01.2017 sent by the petitioner to the revision of assessment notice, dated 27.09.2016 sent by the second respondent.

7. According to the petitioner, as seen from the reply, dated 18.01.2017, the petitioner has denied the alleged purchase from Sri Sai Industries, Anandapur and in the same reply they had requested the second respondent to furnish documents relating to the alleged purchase. But, instead of furnishing the copy of the documents sought for by the petitioner violating the principles of natural justice, the second respondent has passed the impugned assessment order by total non-application of mind.

8. Per contra, the learned Additional Government Pleader would submit that there is no violation of principles of natural justice by the second respondent. He drew the attention of this Court, the paragraph No.9 of the counter affidavit filed by the second respondent, wherein, they have stated that sufficient opportunity was granted to the petitioner including granting personal hearing for raising all objections available to them in accordance with law.

9. Further, it is their case that the burden of proof is on the petitioner to establish that there was no interstate purchase from Sri Sai Industries, Anandapur. Therefore, having got

an alternate efficacy appellate remedy under the Act, the only remedy is available to the petitioner is filing an appeal under Section 51 of the TNVAT Act, 2006.

10. Admittedly, in the instant case, the petitioner by his reply, dated 18.01.2017 to the pre-revision notice, dated 27.09.2016 had categorically denied the alleged interest purchaser from Sri Said Industries, Anandapur and they have also requested for copies of the documents pertaining to the alleged purchase from the second respondent. Eventhough, these objections were received by the second respondent, even without furnishing a copy of the documents pertaining to the alleged purchase from Sri Sai Industries, Anandhapur or any other documentary proof to prove the said purchase.

11. The second respondent has passed the impugned assessment order, without applying his mind to the reply, dated 18.01.2017 objectively. It has been consistently held by this Court that sufficient opportunity must be granted to the assessee before any assessment order is passed. But, in the instant case, even though, the specific request was made for production of proof for the said alleged purchase made by the petitioner from Sri Sai Industries, Anandhapur. The said proof has neither being given to the petitioner nor the second respondent has sent any reply to the objection, dated 18.01.2017 sent by the petitioner before passing of the impugned assessment order.

12. For the foregoing reasons, this Court is of the considered view is that, principles of natural justice has been violated by the second respondent under the impugned assessment order.

13. In such circumstances, the impugned assessment order, dated 03.03.2017, passed by the second respondent in TIN No.33855024030/ 2015-16, is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law, who shall pass final orders after giving sufficient opportunities, within a period of eight (8) weeks, from the date of receipt of a copy of this order.

14. With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// 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 Commercial Tax Officer,
West veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai - 625 020.

+1 cc to Mr. B.Rooban, Advocate SR.No.53219
+1 cc to The Special Government Pleader Sr.No.53379

ls/ksa

W.P.(MD)No. 8754 of 2017
11.03.2019

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