BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.03.2019

CORAM

THE HONOURABLE MR.JUSTICE. ABDUL QUDDHOSE

W.P(MD).No.10970 of 2015
and
M.P.(MD)No.1 of 2015

M/s.K.R.Agency,
Rep.by its Proprietor,
K.Ravi : Petitioner

Vs.

1.The Appellate Deputy Commissioner (CT) (FAC)
1st Floor, Commercial Taxer Building,
Reserve Line, Tirunelveli,
Tirunelveli District.

2.The Commercial Tax Officer,
Nagercoil (Rural),
Kanyakumari District. : Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the records on the file of the 2nd respondent in his proceedings in TIN:33786124776/2013-2014, dated 01.12.2014 and quash the same as illegal.

For petitioner : Mr.J.Jeyakumaran
For Respondents : Mr.D.Muruganantham, Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the assessment order dated 01.12.2014 passed by the 2nd respondent in TIN:33786124776/2013-2014.

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 the petitioner, he is paying tax to the 2nd respondent without default and he has also been filing his monthly returns, which has also been accepted by the 2nd respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act 2006. But, according to him, under the pre revision notice dated 12.11.2014, the 2nd respondent had proposed to revise the assessment for the assessment year 2013-2014. According to the petitioner, even though he did not file any reply to the said pre revision notice, he participated in the assessment proceedings and admitted that he did not report the purchase for a sum of Rs.15,98,782/- effected from Tvl.Pepsico Limited and he agreed to pay the tax for the said amount. But, it is the case of the petitioner under the impugned assessment order, the 2nd respondent has included taxable turnover already reported by the petitioner to the 2nd respondent as per the returns furnished by them for which taxes were already paid by the petitioner. Therefore, it is the case of the petitioner that it will amount to double taxation. According to the petitioner, even though the petitioner had personally appeared before the 2nd respondent during the revision of assessment proceedings, the said fact has not been recorded in the impugned assessment order. According to the petitioner, except his liability to pay tax for a sum of Rs.15,98,782/-, which was not reported earlier, he is not liable to pay the other sums demanded by the 2nd respondent under the impugned assessment order. Aggrieved by the order dated 01.12.2014 passed by the 2nd respondent, the instant Writ Petition has been filed.

3.Heard Mr.J.Jeyakumaran, learned counsel for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader for the respondents.

4.This Court has perused and examined the impugned assessment order. It is the case of the petitioner that except for not reporting the purchase effected from Tvl.Pepsico Limited for a sum of Rs.15,98,782/-, he has reported all the sales and purchases to the 2nd respondent through his monthly returns, which was also accepted by the 2nd respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act 2006, on deemed assessment basis. According to the petitioner, the total taxable turn-over already reported by the petitioner to the 2nd respondent by their monthly returns for which tax has already been paid has also been included in the impugned assessment order, resulting in the 2nd respondent assessing tax liability at a huge amount of Rs.61,41,335/-. Even though, according to the petitioner, tax is payable by the petitioner for the unreported amount of Rs.15,98,782/-, it is also the case of the petitioner that he had personally appeared before the 2nd respondent during the assessment proceedings, but under the impugned assessment order, the 2nd respondent has observed that the petitioner had not appeared. It is not clear from the assessment order as to how the 2nd respondent has taken into consideration the taxable turnover already reported by the petitioner through his monthly returns submitted earlier, which was also accepted by the 2nd respondent under Section 22(2) of the Tami Nadu Value Added Tax Act 2006 on deemed assessment basis. No reasons have been given by the 2nd respondent for including the said amount. As seen from the impugned assessment order, there is total non application of mind by the 2nd respondent before passing the impugned assessment order. Detailed reasons ought to have been given for arriving at a huge sum of Rs.61,41,335/- as tax liability, even though, the petitioner admits that he is liable to pay tax on the purchased turnover effected from Tvl.Pepsico Limited for a sum of Rs.15,98,782/- . This Court by various decisions has held that affording adequate opportunity should mean and include granting the right of personal hearings.

5.In the instant case, no personal hearing was afforded to the petitioner as seen from the impugned assessment order even though, the petitioner submits that he was personally present during the assessment proceedings. Therefore, the 2^{nd} respondent has also violated the principles of natural justice by not affording sufficient opportunity to the petitioner to raise all objections available to him under law.

6.In the result, the impugned assessment order dated 10.12.2014 is hereby quashed and the 2^{nd} 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 two weeks from the date of receipt of the fresh pre revision notice and after giving sufficient opportunity to the petitioner, including granting the right of personal hearing, the 2^{nd} respondent shall pass final orders in accordance with law, within a period of 8 weeks thereafter.

7.With the aforesaid direction, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Writs)

/True Copy/

Sub Assistant Registrar

To
1.The Appellate Deputy Commissioner (CT) (FAC)
1st Floor, Commercial Taxer Building,
Reserve Line, Tirunelveli,
Tirunelveli District.

2.The Commercial Tax Officer,
Nagercoil (Rural),Kanyakumari District.

+1cc to Mr.J.Jeyakumaran, Advocate in SR.No.55051

RR/03.05.2019/3P/4C

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