BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **08.03.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.13111 of 2015
and
M.P.(MD) Nos.1 & 2 of 2015

Tvl.Saran Tiles and Traders,
Rep., by its Proprietor,
R.Saravanan. ... 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 Assistant Commissioner (CT),
Tenkasi Assessment Circle,
Commercial Tax Building,
No.56-B, Railway Feeder Road,
Tenkasi,
Thirunelveli District 627 811 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned Proceedings of the 2nd respondent in TIN No.33185685599/2013-14 dated 24.02.2015 and quash the same and to consequently direct the 2nd respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.M.Jeyakumar,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the Assessment Order dated 24.02.2015 passed by the second respondent in TIN No.33185685599/2013-14.

2. It is the case of the petitioner that he is a registered dealer under the TN VAT(Tamil Nadu Value Added Tax) Act, 2006. It is his case that the impugned assessment order has been passed by the second respondent without considering the objections raised by him in reply dated *nil* to the pr-revision notice issued by the second respondent on 30.12.2014 and further, it is his case that no personal hearing was afforded to him before the impugned Assessment order was passed. In such circumstances, the instant writ petition has been filed challenging the impugned assessment order.

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

4. According to the learned counsel for the petitioner, the impugned Assessment order is not a speaking order. He drew the attention of this Court to the impugned assessment order and the reply sent by the petitioner dated nil to the pre-revision notice dated 30.12.2014 sent by the second respondent. According to him, as seen from the impugned assessment order, the second respondent has not considered the objections raised by the petitioner in his reply dated *nil* even though the second respondent has acknowledged the receipt of the said reply. The following objections were raised by the petitioner in his reply dated *nil*:-

> **(a)** The stock difference could not have been virtually derived without taking physical stock of the goods held at the time of inspection and therefore, the Inspecting Officer as well as the Assessing Officer have erroneously arrived at a figure of Rs.5,40,000/- as the stock difference.
>
> **(b)** There is no specific prohibition for the adjustment of Input Tax Credit(ITC) accrued out of purchase of goods taxable at 5% towards the output due accrued on account of sales taxable at 14.5%. Therefore, there is no sales suppression.

5. The learned counsel for the petitioner also drew the attention of this Court to Section 19 which deals with the specific ban in allowing Input Tax Credit(ITC) under the circumstances detailed therein. According to the learned counsel for the petitioner, despite raising the aforesaid objections, there is no discussion whatsoever by the Assessing Officer under the impugned Assessment Order. Therefore, according to the learned counsel for the petitioner, the respondents have violated the principles of natural justice by not affording sufficient opportunity to the petitioner and by not considering the objections raised by him in the impugned assessment order.

6. Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the respondents have duly considered all the objections raised by the petitioner and there is an alternative, efficacious, appellate statutory remedy

available to the petitioner under Section 51 of the TN VAT Act, 2006. Without exercising the alternate Appellate remedy, the petitioner has approached this Court under Article 226 of the Constitution of India, which according to the learned Additional Government Pleader is not maintainable.

Discussion:

7. Admittedly, the petitioner has filed a detailed reply even though dated *nil* to the pre-revision notice dated 30.12.2014 sent by the respondents under Section 27 of the TN VAT Act 2006. In the reply, the petitioner has raised the objections referred to supra. But in the impugned assessment order, the second respondent has not considered any of the objections objectively but instead has passed a non-speaking order by observing that the objections put forth by the dealer have been gone through and concluded that the objections were not acceptable.

8. Further, no personal hearing was granted to the petitioner before passing the impugned assessment order. As seen from the impugned assessment order, without application of mind, the respondent has blindly accepted the report of the Enforcement wing officials. For the forgoing reasons, this Court is of the considered view that the second respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner to raise all objections available to him under law.

9. Therefore, in the result, the impugned assessment order dated 24.02.2015 passed by the second respondent in TIN No.33185685599/2013-14 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law after giving sufficient opportunity to the petitioner to raise all objections available to him under law and by granting personal hearing to him within a period of eight (08) weeks from the date of receipt of a copy of this order. Accordingly, the **Writ Petition is disposed** of. No costs. Consequently, connected miscellaneous petitions are 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 Assistant Commissioner (CT),
Tenkasi Assessment Circle,
Commercial Tax Building,
No.56-B, Railway Feeder Road,
Tenkasi,
Thirunelveli District 627 811

+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.2954
+1 CC to M/s.B.ROOBAN, Advocate SR-52860

W.P.(MD).No.13111 of 2015
08.03.2019

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