BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2019

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THE HONOURABLE **MR.JUSTICE. ABDUL QUDDHOSE**

W.P(MD).No.15465 of 2015
and
M.P.(MD)Nos.1 and 2 of 2015

G.Sivasubramanian : 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,
Commercial Tax Building,
5/4, 56, Chinnathopy Street,
Thiruppathur,
Sivagangai District - 630 211. : Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, to call for the records pertaining to the impugned proceedings of the 2nd respondent in TIN No.33145501903/2011-12, dated 10.12.2014 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

ORDER

The instant Writ Petition has been filed challenging the impugned assessment order dated 10.12.2014 passed by the second respondent in TIN No.33145501903/2011-12.

2.It is the case of the petitioner that a pre revision notice dated 13.03.2014 was issued by the 2nd respondent under Section 27 of the Tamil Nadu Value Added Tax Act 2006 and the same was not received by the petitioner nor the assessment order was served on him. It is also the case of the petitioner that no personal hearing was afforded to the petitioner before passing of the impugned assessment order. In such circumstances, the instant Writ Petition has been filed.

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

4.According to the learned counsel for the petitioner, the name of the petitioner's business was changed from 'Nagalakshmi Agencies' to 'Lakshmi Agencies' with effect form 25.04.2008, as seen from the endorsement made by the second respondent in the registration certificate dated 22.01.2007. According to the learned counsel for the petitioner, certificate was also issued to 'Lakshmi Agencies' by the 2nd respondent on 29.04.2008. According to him, neither the pre revision notice nor the impugned assessment order was served on the petitioner.

5. Per contra, the learned Additional Government Pleader for the respondents would submit that the pre revision notice was sent to 'Nagalakshmi Agencies', at the same address, where the 'Lakshmi Agencies' is also carrying on business in which, the petitioner is the Proprietor. Therefore, according to him, the pre revision notice was duly served on the petitioner and the assessment order was also served on him. Therefore, the only remedy available to the petitioner is to file a statutory appeal before the appellate authority forum under Section 51 of the Tamil Nadu Value Added Tax Act 2006.

6.This Court has perused and examined the impugned assessment order. It is the categorical stand of the petitioner that neither the pre revision notice nor the assessment order was served on him. It is also an admitted fact that the name of the petitioner's concern was changed from 'Nagalakshmi Agencies' to 'Lakshmi Agencies' with effect from 25.04.2008, as seen from the endorsement made by the 2nd respondent in the registration certificate. The name change has also not been disputed by the respondents. Even according to the respondents, the pre revision notice was served only on 'Nagalakshmi Agencies', and not on 'Lakshmi Agencies'. No proof has been submitted before this Court to show that the pre revision notice was served on the petitioner. Further no proof was also produced before this Court to show that the impugned assessment order was served on the petitioner.

7.As seen from the impugned assessment order, no personal hearing was also afforded to the petitioner before passing of the impugned assessment order. It is settled law as held by the judgment of the Hon'ble Division Bench of this Court in the case of ***G.V.Cotton Mills Private Limited Vs. Assistant Commissioner(CT), Coimbatore***, reported in ***60 GSTR 418*** that whether or not the petitioner/dealer asks for personal hearing, it is mandatory for the respondents to grant personal hearing to the petitioner. But in the instant case, as seen from the impugned assessment order no personal hearing has been afforded to the petitioner.

8.For the forgoing reasons, it is clear that the 2nd respondent has violated the principles of natural justice under the impugned assessment order. In the result, the impugned assessment order dated 10.12.2014 is hereby quashed and the second 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, the second respondent shall pass final orders in accordance with law, within a period of 8 weeks thereafter.

9.With the aforesaid directions, this Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL SIDE)

// 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,
Commercial Tax Building,
5/4, 56, Chinnathopy Street,
Thiruppathur,
Sivagangai District - 630 211.

+1cc to Mr.B.Rooban, Advocate, SR.No.55014
+1cc to M/s.Special Government Pleader,SR.No.54941

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and
M.P.(MD)Nos.1 and 2 of 2015

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KK/SAR/02.04.2019/ 3P- 5C