BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.16299 of 2015
and
M.P(MD) No.1 of 2015

M/s.Sumathra Stores,
Represented by its Proprietor O.S.PArthiban,
No.9, 3, 17, Puliyur Road,
Main Road, Keeranur,
Pudukkotai. ... Petitioner

Vs

The Assistant Commissioner (CT),
Pudukottai-1 Assessment Circle,
Pudukottai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33744100311/2010-11 dated 01.07.2015 issued by the respondent to quash the same as illegal, arbitrary and against the basic provisions of the TNVAT Act 2006 and direct the respondent to reassess the petitioner under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.N.Sudalai Muthu,
for S.Karunakar

For Respondent : Mr.M.Jeyakumar
Additional Government Pleader.

ORDER

The instant writ has been filed challenging the order dated 01.07.2015 passed by the respondent in TIN 33744100311/2010-11.

2.It is the case of the petitioner that he is a registered dealer under the TNVAT Act, 2006. It is the further case of the petitioner that he has opted for compounding rate of assessment under Section 3(4) of TNVAT Act, 2006. Under Section 3(4)(a) of the TNVAT Act, 2006, every dealer, who effects second and subsequent sales of goods purchased within the State, whose turnover relating to taxable goods, for a year, is less than Rs.50,00,000/- (Rupees

Fifty Lakhs only), may at his option, instead of paying tax on compounding basis, is entitled to pay tax for each year on his turnover relating to taxable goods at such rate, not exceeding one per cent, as may be notified by the Government. According to the petitioner, for all the assessment years, he has opted to pay tax only under Section 3(4)(a) of the TNVAT Act, 2006.

3.According to the petitioner, the revised return was filed by the petitioner based upon internal the audit report submitted by the petitioner. Thereafter, the respondent inspected the business premises of the petitioner. After inspection, the respondent issued pre-revision notice to the petitioner, which was also replied by the petitioner. Thereafter, the impugned assessment order dated 01.07.2015 was passed.

4.A counter has also been filed by the respondent, wherein they have stated that they had issued pre-revision notice to the petitioner on 15.05.2015, wherein the respondent proposed to invoke Section 3(4) of TNVAT Act, 2006. It is his case that there is no violation of principles of natural justice committed by the respondent. According to the respondent, since appeal remedy is available to the petitioner under the Act, the writ petition is not maintainable.

5.Heard Mr.N.Sudalai Muthu, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader appearing for the respondent.

6.It is the case of the petitioner that the respondent has violated the principles of natural justice. According to him, there is no basis for the respondent to levy tax under Section 3(2) of TNVAT Act, 2006 on commodity basis. It is their case that they have opted for assessment only under Section 3(4) of TNVAT Act, 2006 on compounding basis. Further, it is their case that even if the internal audit report submitted by the petitioner is to be accepted, the total taxable turnover of the petitioner has not exceeded Rs.50 Lakhs, which is the maximum turnover for taxable goods under Section 3(4)(a) of TNVAT Act, 2006. Therefore, According to the petitioner, arbitrarily without following the provisions of TNVAT Act, 2006, the respondent has assessed the payment of tax by the petitioner under Section 3(2) of TNVAT Act, 2006. It is also the case of the petitioner that before passing the assessment order, the petitioner was not granted an opportunity of personal hearing before the respondent. Even though, in the pre-revision notice, the right of personal hearing was offered to the petitioner, date was not fixed for the petitioner to personally appear before the respondent.

7. As seen from the impugned assessment order, there is no reference to any personal hearing afforded to the petitioner. Further, as seen from the provision of Section 3(4)(a) of the TNVAT Act, 2006, it is evidently clear that if the taxable turnover is

less than Rs.50 lakhs, the assessee can opt for assessment on compounding basis. The Assessing Officer can assess the assessee only under Section 3(4)(a) of TNVAT Act and not under Section 3(2) of TNVAT Act, 2006 on commodity basis. But in the instant case, despite the fact that as per the revised return and as per the impugned order, the total taxable turnover of the petitioner is below of Rs.50 lakhs. The respondent has passed impugned assessment order under Section 3(2) of the TNVAT Act, which, in the considered view of this Court, is an erroneous order passed without application of mind. The respondent has also not afforded the right of personal hearing to the petitioner as seen from the impugned assessment order. In the light of the above facts, this Court is of the considered view that the impugned assessment order has to be quashed.

8.Accordingly, the impugned assessment order dated 01.07.2015 passed by the respondent in TIN 33744100311/2010-11 is hereby quashed and the matter is remanded back to the respondent for fresh consideration, who shall pass final orders after affording sufficient opportunity to the petitioner to raise all objections available to him under law and also by granting him the right of personal hearing to him, within a period of eight weeks from the date of receipt of a copy of this order.

9.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

To

The Assistant Commissioner (CT),
Pudukottai-1 Assessment Circle,
Pudukottai.

+1cc to Special Government Pleader, in SR.No. 51690

cp
SP/05.04.2019/3P/3C

W.P.(MD)No.16299 of 2015
and
M.P(MD) No.1 of 2015
01.03.2019(3/4)