BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2019

CORAM

THE HONOURABLE MR.JUSTICE. ABDUL QUDDHOSE

W.P(MD).No.16739 of 2009
and
M.P.(MD)No.1 of 2015

Tvl.Kumar Agencies,
Represented by its Proprietor,
P.Sivasubramanian, aged about 53 years,
S/o. K.Ponnusamy Nadar,
No.101/70, Murugan Koil Street,
Usilampatti,
Madurai District - 625 532 : 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),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
No.15/91, Sonalar Street,
Jawahar Nagar, Thirumangalam,
Madurai District - 627 811. : Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus, calling for records pertaining to the impugned Revision Notice of the 2nd respondent in TIN:33935041155/13-14, dated 08.06.2015 and quash the same and consequently direct the 2nd respondent to re-do the assessment afresh by verifying the petitioner book of accounts and to conduct enquiry by summoning the Other end Seller before initiating assessment proceedings.

For petitioner : Mr.B.Rooban

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

ORDER

The instant writ petition has been filed challenging the show cause notice dated 08.06.2015, issued by the second respondent under Section 27 of the Tamil Nadu Value Added Tax Act 2006.

2.It is the case of the petitioner that the second respondent has issued the impugned notice by simply relying upon the proposals of the enforcement wing officials. It is also their case that without application of mind, the impugned notice has been issued. According to the petitioner, no enquiry was conducted prior to the issuance of the impugned show cause notice and the principles of natural justice have been violated by the second respondent. In such circumstances, the Writ Petition has been filed.

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

4.Admittedly, the petitioner has challenged the show cause notice issued under Section 27 of the TNVAT Act 2006. It is his case that for the fault of the Other end seller, the petitioner cannot be held responsible. Further it is their case that no tax can be levied on discount given by the Seller. A reply dated 07.09.2015 was also sent by the petitioner to the second respondent for the impugned notice dated 08.06.2015. Even before final orders were passed under Section 27 of the TNVAT Act 2006, the petitioner has approached this Court under Article 226 of the Constitution of India, challenging the impugned show cause notice.

5.It is settled law that show cause notice cannot be challenged under Article 226 of the Constitution of India, unless and until the show cause notice has been issued without jurisdiction. It is not so in the instant case. Instead of waiting for the out come of the final order, the petitioner has prematurely approached this Court under Article 226 of the Constitution of India, which is not maintainable. There is no violation of principles of natural justice by the second respondent, as it is a statutory power given to the second respondent to issue a show cause notice prior to passing final orders under Section 27 of the TNVAT Act, 2006. Admittedly, in the instant case, after receipt of the show cause notice, the petitioner has also sent a reply which is under consideration by the second respondent. In view of the filing of the Writ Petition, till date no final order has been passed by the second respondent.

5.For the foregoing reasons, there is no merit in the instant Writ Petition. However, the second respondent is directed to consider all the objections raised by the petitioner in his reply dated 07.09.2015 and also grant the petitioner the right of personal hearing and pass final orders in accordance with law within a period of eight [8] weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (WRIT)

// 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),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
No.15/91, Sonalar Street,
Jawahar Nagar,Thirumangalam,
Madurai District - 627 811.

+1 CC to M/s.SPL GP (SR-53956[F] dated 14/03/2019)

W.P(MD).No.16739 of 2009
12.03.2019

das
TK/SAR- /28.05.2019/3P/4C