BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.04.2019
CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.16953 to 16958 of 2015
and
M.P.(MD).Nos.1, 1, 1, 1, 1 and 1 of 2015

W.P.(MD).Nos.16953 of 2015 to 16958 of 2015

Tvl.Italiya Traders,
Represented by its Proprietor,
M.Shajahan, aged about 52 years,
S/o. K.Mohamed Dasim,
No.92/E, M.K.Complex,
Boothanayagiyamman Koil Street,
Thuvarankurichi, Manaparai Taluk,
Thiruchirappalli District-621 314. ... 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,
   Manapparai Assessment Circle,
   Commercial Tax Building,
   No.D-36, Madurai Road (First Floor),
   Manaparai, Thiruchirapalli District-621 306. ... Respondents

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of Writs of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings of the second respondent in TIN.33513742071/ 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, dated 24.07.2015 and quash the same and to consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
for M/s.R.V.Manikandan Associates
For Respondents : Mr.M.Jeyakumar
Additional Government Pleader
(In all Writ Petitions)

COMMON ORDER

Since the issue involved in all these batch of Writ Petitions are one and the same they are disposed of by a common order.

2. It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006.

3. According to the petitioner, the second respondent proposed to revise assessment for the assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, by issuing separate pre-revision notices for the respective Assessment years.

4. According to the petitioner, a detailed reply was sent to each of the pre-revision notices. According to the petitioner, the revision of assessment was proposed by the respondent on the ground that discounts relating to the purchases made by the petitioner were not included in the 'taxable turnover'. According to the petitioner, as seen from the replies sent by them to the respective pre-revision notices, as per Explanation (II) (ii) of Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006, any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included in the turnover.

5. According to the petitioner, in the instant case, “Post-purchase discounts” were granted by the sellers to the petitioner and therefore, the said discounts are exempted despite the tax element from payment of tax. Further, it is the case of the petitioner that no personal hearing was afforded to the petitioner in the revision of assessment proceedings.

6. Counter affidavits have also been filed in all these batch of Writ Petitions by the respondents.

7. According to them, the discount receipts were not included in the turnover in the monthly reports filed by the petitioner and that is the reason to revise the assessment under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. According to them, adequate opportunity was given to the petitioner in the revision of assessment proceedings and therefore, the only remedy available to the petitioner is to file the statutory appeals. But instead he has filed these Writ Petitions which according to them are not maintainable.

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

9. This Court has perused and examined the impugned assessment orders. As seen from the impugned assessment orders, no personal hearing was afforded to the petitioner. It is settled law that whether the petitioner requests for a personal hearing or not, the second respondent ought to have granted personal hearing to the petitioner in the revision of assessment proceedings.

10. Further, it is the categorical stand of the petitioner relying upon Explanation (II) (ii) of Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006, that 'Post-Sale discounts' cannot be included in the taxable turnover. Even though, the said stand was taken in replies sent by the petitioner to the respective pre-revision notices, it has not been considered by the second respondent in the light of Explanation (II) (ii) of Section 2 (41) of the Tamil Nadu Value Added Tax Act, 2006. Instead without referring to the said provisions, the second respondent without applying his mind has rejected the contention of the petitioner.

11. For the foregoing reasons, this Court is of the considered view that the second respondent has violated the principles of natural justice by not affording right of personal hearing to the petitioner in the revision of assessment proceedings and has also not applied his mind to Explanation (II) (ii) of Section 2(41) of the Tamil Nadu Value Added Tax Act, 2006, while rejecting the contention of the petitioner that 'post-sale discounts' will not form part of the total taxable turnover. In the result, the impugned assessment orders 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 are hereby quashed. The matters are remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders for the respective assessment years 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15 after giving adequate opportunity to the petitioner including granting him the right of the personal hearing within a period of eight weeks from the date of receipt of a copy of this order.

12. With the aforesaid direction, these Writ Petitions stand disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

sd/
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar

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,
   Manapparai Assessment Circle,
   Commercial Tax Building,
   No.D-36, Madurai Road (First Floor),
   Manaparai, Thiruchirapalli District-621 306.

+1.CC. To SPECIAL GOVERNMENT PLEADER, in SR No.32751

Order made in
W.P.(MD).Nos.16953 to 16958 of 2015
23.04.2019

tsg
MK/17.05.2019/4P/4C