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

W.P.(MD).Nos.17435, 17436, 17437, 17438, 17439 and 17440 of 2015
and
M.P.(MD).Nos.1, 1, 1, 1, 1 and 1 of 2015

Tvl.Veyil Katha Eswari & Co.,
Represented by its Proprietor,
V.P.M.Thnagaraj, aged about 46 years,
S/o.Panjavarnam,
No.3/456-B, Madurai Mandapam Road,
Paramakudi,
Ramanathapuram District-623 707. ... Petitioner in all W.Ps.

-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,
Paramakudi Assessment Circle,
Commercial Tax Building,
No.3/103, Madurai Mandapam Main Road,
Thirunagar, Theligathanallur,
Paramakudi,
Ramanathapuram District-623 707. ... Respondents in all W.Ps.

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, by calling for records pertaining to the impugned proceedings of the second respondent TIN.33935420813/2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 dated 24.07.2015 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon to the petitioner and by giving due opportunity to file their objection and for personal hearing.

For Petitioner : Mr.B.Rooban
for M/s.R.V.Manikandan Associates in all WPs

For Respondent : Mr.M.Jeyakumar,
Additional Government Pleader
in all W.Ps.

COMMON ORDER

These instant writ petitions have been filed challenging the impugned assessment orders for the years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to him, he has been submitting the monthly returns and has also been paying the tax regularly and the respondents have also accepted the monthly returns on deemed assessment basis under Section 22(2) of the TN VAT Act, 2006. The respondents proposed to revise the assessment for the aforesaid assessment years by issuing separate pre-revision notices on the petitioners, based on the web report of their department stating that the petitioner has suppressed certain sales effected by him during those assessment years. It is the case of the petitioner that he has been repeatedly requesting the respondent to furnish the details of the alleged sales based on which the revision of assessment was proposed to be initiated under the aforementioned pre-revision notices. According to the petitioner, despite several requests made by him, the respondent failed to furnish the copies of the documents by which the respondent alleges that there was sales suppression made by the petitioner. A detailed reply was also sent by the petitioner to the respective pre-revision notices. According to the petitioner despite the said reply and without furnishing copies of the documents based on which the respondent alleges sales suppression on the part of the petitioner, the respondent has passed non speaking impugned assessment orders without considering the objections raised by the petitioners in his replies to the respective pre-revision notices. Further, it is the case of the petitioner that no personal hearing was afforded in the revision of assessment proceedings.

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

4.This Court has perused and examined the impugned assessment orders for the respective assessment years. The respondent has acknowledged the receipt of the respective replies sent by the petitioner to the respective pre-revision notices sent by the respondent proposing to revise the assessment for the respective assessment years. Even though it has been acknowledged, the respondents under the respective impugned assessment orders has rejected the objections by non speaking orders. Excepting for stating that the objections given by the petitioner is over ruled, no reasons have been given in the impugned assessment orders for overruling the objections raised by the petitioner is the respective replies sent by him to the respective pre-revision notices sent by the respondents. Further, as seen from the impugned assessment orders, no personal hearing has been afforded to the petitioner in the revision of assessment proceedings. It is settled law that personal hearing is mandatory whether the petitioner seeks for the same or not.

5.The learned Additional Government pleader for the respondents would vehemently argue that since the statutory remedy is available to the petitioner under Section 51 of TNVAT Act 2006, the writ petition is not maintainable.

6.This Court is of the considered view that the respondents have violated the principles of natural justice by not affording personal hearing to the petitioner and by not applying his mind independently in respect of the replies sent by the petitioner to the pre-revision notices and hence, the writ petition filed by the petitioner is maintainable under article 226 of the Constitution of India.

7.For the foregoing reasons, the impugned assessment orders dated 24.07.2015 for the respective assessment years 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 is hereby quashed and the matter is remanded back to the respondents for fresh consideration and the respondents shall provide all the documents relied upon by the petitioners in respect of the pre-revision notices issued to the petitioner and shall pass final orders after affording adequate opportunity to the petitioner including granting him the right of personal hearing within a period of eight weeks from the date of receipt of a copy of this order.

8.With the aforesaid direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Crl.side)

/ True Copy /

Sub Assistant Registrar(CS-)

vsg

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,
Paramakudi Assessment Circle,
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Thirunagar, Theligathanallur, Paramakudi,
Ramanathapuram District-623 707.

+1 CC to M/s.SPL GP (SR-62130[F] dated 24/04/2019)

+1 CC to M/s.B.ROOBAN, Advocate (SR-61994[F] dated 24/04/2019)

Order made in
W.P.(MD).Nos.17435, 17436, 17437,
17438, 17439 and 17440 of 2015
and
M.P.(MD).Nos.1, 1, 1, 1,
1 and 1 of 2015
23.04.2019

ES/14.06.2019/4P/5C