BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.15956 of 2017
and
W.M.P.(MD)No.12606 of 2017

M/s.Durai Timber Depot,
Represented by its Proprietor,
D.Ramesh, No.43E, Kattumavadi Road,
Aranthangi - 614 606,
Pudukkottai District. : Petitioner

Vs.

The Commercial Tax Officer,
Aranthangi Assessment Circle,
Aranthangi, Pudukkottai District. : Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33074141759/2011-2012, dated 30.06.2017 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.N.Shanmugaselvam,
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the assessment order, dated 30.06.2017, passed in TIN No.33074141759/2011-2012.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. (hereinafter referred to as 'TNVAT Act, 2006'). According to him, he has regularly been filing his monthly returns, which was accepted by the respondents under Section 22(2) of the TNVAT Act, 2006. According to the petitioner, there was an inspection by the Enforcement Wing Officials in the petitioner's business premises on 08.10.2016, and the officers alleged that there was a purchase suppression based on the verification of the purchase details from the other end dealers' Annexure - II through the Department's web site. According to the petitioner, the Enforcement Wing Officers estimated the sale suppression based on the purchase suppression at Rs.34,88,150/-. According to the petitioner, the Enforcement Wing Officers have also proposed to levy penalty at 150% of the tax due under Section 27(3) (c) of the TNVAT Act, 2006. According to the petitioner, without making any independent enquiry, based on the Enforcement Wing Officers' report, the respondent issued a pre revision notice, dated 15.03.2017, proposing to revise the assessment based on the Enforcement Wing Officer's report. According to the petitioner, a reply was also sent on 06.05.2017, wherein, they have categorically denied that there was no purchase suppression. In the said reply, the petitioner has also sought for copies of the purchase bills and other mentioned documents. Thereafter, according to the petitioner, without affording sufficient opportunity and without furnishing the copies of the documents as sought for in the reply and mainly based on the Enforcement Wing Officer's report, which is not an independent source of information, the respondent had passed the impugned assessment order, dated 30.06.2017, confirming the quantum of tax and penalty claimed in the pre-revision notice, dated 15.03.2017, for the assessment year 2011-2012. Aggrieved by the assessment order dated 30.06.2017, for the assessment year 2011-2012, the instant Writ Petition has been filed.

3.A counter affidavit has also been filed by the respondent, wherein, they have stated that all the objections raised by the petitioner has been duly considered by the respondent in the impugned assessment order. Further, it is their case that personal hearing was also afforded to the petitioner and there is no violation of principles of natural justice. This being their case, according to them, only remedy available to the petitioner is to file an appeal under Section 51 of the TNVAT Act, 2006, and therefore, according to them, the Writ Petition is not maintainable.

4.Heard Mr.K.Soundararajan, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondent.

5.The learned counsel for the petitioner drew the attention of this Court to the decision of the Honourable Division Bench in the case of **Madras Granites (P) LTD Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another**, reported in **146 STC 642**, and submitted that the Assessing Officer will have to independently pass the assessment order and cannot blindly accept the report of the Enforcement Wing Officers of the Department.

6.Relying upon the said judgment, the learned counsel for the petitioner would contend that in the instant case also, there was no independent assessment made by the assessing officer, but, instead the assessment officer has blindly accepted the enforcement wing officer's report. The learned counsel for the petitioner also drew the attention of this Court to the case of **JKM Graphics Solutions Private Limited, Vs. CTO, Vepery Assessment Circle** reported in **99 VST 343** and submitted that the Assessing Officer ought not to have blindly accepted the enforcement wing officer's report and should have verified the same independently. Further, the learned counsel for the petitioner would contend that in the instant case, no personal hearing was afforded to the petitioner. Therefore, according to him, the assessment order has been passed by total non application of mind and there is violation of principles of natural justice.

7.Per contra, the learned Additional Government Pleader for the respondent would submit that personal hearing was afforded to the petitioner in the assessment proceedings and all the objections raised by the petitioner in the reply was duly considered by the respondent under the impugned assessment order. This being the case, according to him, the only remedy available to the petitioner is to file an appeal under Section 51 of the TNVAT Act, 2006.

8.**Discussion:**

This Court has perused and examined the impugned assessment order. As seen from the impugned assessment order, the respondent has accepted the report of the Enforcement Wing Officer in toto and also accepted their proposals in toto. As seen from the impugned assessment order, no independent verification was done by the respondent like cross checking with the other end officers with whom, the other end sellers had reported the sales. As rightly contented by the learned counsel for the petitioner, the decisions rendered by the Honourable Division Bench of this Court in the case of **Madras Granites (P) LTD Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another**, reported in **146 STC 642**, and the case of **JKM Graphics Solutions Private Limited, Vs. CTO, Vepery** reported in **99 VST 343**, are squarely applicable for the facts of the case. Further, as seen from the impugned assessment order, no personal hearing has been afforded to the petitioner. Even though in the counter filed by the respondents, they have stated that personal hearing was afforded to the petitioner, it should have been reflected in the impugned assessment order.

9.For the forgoing reasons, this Court is of the considered view that there is total non application of mind on the part of the respondent and the respondent has also violated the principles of natural justice by not affording adequate opportunity to the petitioner to raise all objections available to him under law.

10.Accordingly, the impugned assessment order, dated 30.06.2017, is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders, after giving adequate opportunity to the petitioner to raise all objections available to him under law and also affording him the right of personal hearing, within a period of 8 weeks from the date of receipt of a copy of this order.

11.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P & A)

// True Copy //

Sub Assistant Registrar(CS)

das

To

The Commercial Tax Officer,
Aranthangi Assessment Circle,
Aranthangi, Pudukkottai District.

+1CC TO MR.K.SOUNDARARAJAN, Advocate Sr. No.59639

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and
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DB(CO)
TR (09.05.2019) 4P 3C