BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.16903 of 2017
and
W.M.P.[MD]No.13470 of 2017

Tvl. Sri.Muneeswaran Fire Works,
Rep. by its Proprietor M.Ganesh Sankar,
3/1/A-1-V Duraisamypuram, Vijayakariasalkulam,
Vembakotai Via,
Viruthunagar District. : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer,
Sattur, Viruthunagar District.

4.The Deputy Commercial Tax Officer Enforcement Wing - 1,
C.T. Buildings,
Sivakasi, Viruthunagar District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorariified Mandamus, to call for the records relating to the assessment order passed by the third respondent in his Assessment TIN No.33515781981/2016-2017 dated 10.08.2017 and quash the same and to direct the third respondent to delete the levy of penalty under Section 27(3).

For Petitioner : Mr.K.Vadivelu
for Mr.M.Md.Ibrahim Ali
For Respondents : Mr.N.Shanmugaselvam
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the assessment order dated 10.08.2017, passed by the third respondent in TIN No.33515781981/2016-2017.

2.It is the case of the petitioner that he is a registered dealer under the TNVAT Act, 2006. According to him, the third respondent proposed to revise the assessment for the assessment year 2016-2017 by a pre-revision notice dated 08.06.2017. According to the petitioner, he sent a reply dated 03.07.2017 to the pre-revision notice denying his liability by stating that immediately after the inspection by the enforcement wing officials, he has paid the tax and therefore, he is not liable to pay any penalty. Further, it is the case of the petitioner that in the revision of assessment proceedings, no personal hearing was afforded to him which is mandatory under law. In such circumstances, the instant writ petition has been filed challenging the impugned assessment order.

3.Heard Mr.K.Vadivelu, learned Counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents.

4.According to the learned Counsel for the petitioner, on the date of inspection by the fourth respondent on 15.09.2016 itself, the tax amount was paid by way of cheque which was also realised by the third respondent. Therefore, according to the learned Counsel for the petitioner, penalty under Section 27(3)(c) of the TNVAT Act is not attracted. Further, learned Counsel for the petitioner submitted that delayed objections were raised by the petitioner in his reply dated 03.07.2017 to the pre-revision notice dated 08.06.2017 sent by the third respondent which has not been duly considered by the third respondent under the impugned assessment order. Further, it is his case that no personal hearing was granted to the petitioner by the third respondent. He drew the attention of this Court to the impugned assessment order and pointed out that even the date of personal hearing is left as blank in the impugned assessment order. According to him there is total non-application of mind by the third respondent in passing the impugned assessment order.

5.Per contra, learned Additional Government Pleader for the respondents would submit that there is an alternate, efficacious appellate remedy available to the petitioner under section 51 of the TNVAT Act, and without exercising the same, the petitioner has approached this Court under Article 226 of the Constitution of India which is not maintainable. The learned Additional Government Pleader would further contend that penalty is payable since the petitioner has admitted that the petitioner paid the tax amount only on the date of inspection that too belatedly.

Discussion:

6.This Court has perused and examined the impugned assessment order. As rightly pointed out by the learned counsel for the petitioner, the date of personal hearing is left as blank in the impugned assessment order. Further, it is the case of the petitioner that no personal hearing was afforded to him by the third respondent before passing of the impugned assessment order. This Court has also perused the reply dated 03.07.2017 sent by the petitioner to the revision of assessment notice dated 08.06.2017 sent by the third respondent, wherein he has submitted detailed objections for the pre-revision notice dated 08.06.2017 sent by the third respondent. Even though, detailed objections were raised by the petitioner, there is no separate finding given by the third respondent for each and every objection raised by the petitioner in his reply dated 03.07.2017.

7.Considering all these factors, this Court is of the considered view that the third respondent has violated the principles of natural justice and has also not applied his mind in accordance with law under the impugned assessment order. In the result, the impugned assessment order dated 10.08.2017 passed by the third respondent is hereby quashed and the matter is remitted back to the third respondent for fresh consideration in accordance with law and the third respondent shall pass final orders after affording sufficient opportunity to the petitioner to place all objections available to him under law and also grant him the right of personal hearing within a period of eight weeks from the date of receipt of a copy of this order.

8.Accordingly, the writ petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (T&P)

// True Copy //

Sub Assistant Registrar(CS-)

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes,
Fort St. George, Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

3.The Commercial Tax Officer,
Sattur, Viruthunagar District.

4.The Deputy Commercial Tax Officer Enforcement Wing - 1,
C.T. Buildings, Sivakasi, Viruthunagar District.

+1 CC to M/s.SPL GP (SR-55640[F] dated 21/03/2019)

+1 CC to M/s.MOHAMED IBRAHIM ALI, Advocate (SR-55793[F] dated 21/03/2019)

KK/SAR- /04.04.2019/3P/7C/