BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **26.06.2019**
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH
W.P.(MD)No.16904 of 2017
and
W.M.P.(MD)No.13471 of 2017

Tvl.Safaa Trade Agency,
Represented by its Partner, B.M.Ahamed Jan,
No.110A, South Raja Street,
Tuticorin District - 628 001. ... Petitioner

/Vs./

1.The State of Tamil Nadu,
Represented 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, (Enforcement Wing),
Group No.I, C.T.Buildings, Beach Road, Tuticorin District.

4.The Assistant Commissioner (C.T.)-II,
C.T.Buildings, Beach Road,
Tuticorin District. ... Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the assessment order passed by the 4th respondent in his assessment proceedings in TIN 33085842600/2015-2016, dated 21.08.2017 (received by the petitioner on 24.08.2017) and quash the same and to direct the 4th respondent to serve the said notice to the petitioner properly as per Rule 19 of the VAT Act, obtain the documents for the transactions under Section 5(1) of CST Act 1956 and accord a personal hearing and then pass the revisional assessment order.

For Petitioner : Mr.M.MD.Ibrahim Ali
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

This writ petition is filed challenging an order of assessment dated 21.08.2017 for the period 2015-16. The petitioner is a trader in cement and limestone and imports goods under high seas sales. A surprise inspection of the petitioners' business premises was conducted on 26.12.2016 by the Enforcement Wing of the

Commercial Taxes Department. Statements were recorded. Pursuant to that, the petitioner received an order of assessment dated 21.08.2017. According to the petitioner, no notice has been issued by the respondents, prior to framing of the assessment and there is thus a gross violation of principles of natural justice. Though on merits, the assessment is assailed on the ground that the order is wholly based on the proposals of the enforcement wing only, and there is no independent application of mind by the assessing officer, only the ground of violation of principles of natural justice is seriously pursued before me.

2. Counter has been filed in the matter, wherein, in Paragraph No.7, the assessing authority contends that a pre-assessment notice was issued to the dealers on 21.06.2017 and duly served upon one, Thiru.A.Sadia Khan on the same date. Since there was no response to the said notice, the officer proceeded with the assessment and there is thus, no violation of principles of natural justice.

3. A specific query was put to the petitioner as to who the said Thiru.A.Sadia Khan was. Learned counsel has also produced a copy of the partnership deed, wherein the said Thiru.A.Sadia Khan does not figure as a partner. He also confirms that the aforesaid gentleman is not in the employment of the petitioner firm.

4. The learned Special Government Pleader appearing for the respondents is also unable to confirm as to the relationship of the said person with the assessee / petitioner firm.

5. In the light of the aforesaid and in the interests of justice, I am inclined to set aside the impugned order passed by the 4^{th} respondent in his assessment proceedings in TIN 33085842600/2015-2016, dated 21.08.2017 solely for the purpose of affording one more effective opportunity to the petitioner to respond to the pre-assessment proposals. Since the petitioner states that he has not received notice dated 21.06.2017, the respondents are directed to issue a copy of the same forthwith to the petitioner as well as a notice of personal hearing. Upon receipt, the petitioner shall attend the hearing and put forth its submissions along with all materials to support of its stand. An order of assessment *de novo* shall be passed by the authorities, within a period of four weeks from conclusion of the personal hearing.

6. This Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The 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, (Enforcement Wing),
Group No.I, C.T.Buildings, Beach Road,
Tuticorin District.

4.The Assistant Commissioner (C.T.)-II,
C.T.Buildings, Beach Road,
Tuticorin District.

+1 CC to Mr.MOHAMED IBRAHIM ALI, Advocate (SR-71681[F] dated 27/06/2019)

Order made in
W.P.(MD)No.16904 of 2017
Dated:26.06.2019

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