BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No. 18786 of 2017

and W.M.P.(MD)No. 15160 of 2017

Tvl. Thamilan Agency,
represented by its Proprietor,
S. Jeyalakshmi. ... 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,
Karaikudi Assessment Circle,
Commercial Taxe Office,
No.50/52, Jawahar Street,
Karaikudi. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the 2nd Respondent in Assessment No.33685482497/2014-15, dated 02.08.2017 and quash the same and pass such further or other orders as this Court.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.N. Shanmugaselvam
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned Assessment order, dated 02.08.2017 in No.33685482497/ 2014-15.

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

3. It is also the case of the petitioner that they have been filing regular monthly returns and their returns have also been accepted by the second respondent, under Section 22(2) of the Tamil

Nadu Value Added Tax Act, 2006. By, Pre-Revision Notice, dated 12.06.2017, the second respondent has proposed to revise the estimate under Section 21 of the Tamil Nadu Value Added Tax Act, 2006.

4. According to the petitioner, after receipt of the Pre-Revision Notice, they sent a reply dated 28.06.2017 along with revise Form WW which is also duly acknowledged by the second respondent. But, in the impugned Assessment Order, the second respondent has not considered the objections raised by the petitioner in his reply notice, dated 28.06.2017. In such circumstances, the instant Writ Petition has been filed by the petitioner.

5. Heard Mr.B.Rooban, learned counsel for the petitioner and Mr.N. Shanmugaselvam, learned Additional Government Pleader for the respondents.

6. The reply notice, dated 28.06.2017 has been duly acknowledged by the second respondent on 28.06.2017, as seen from the Local Delivery Report placed before this Court by the learned counsel for the petitioner. But, in the impugned Assessment Order, there is no reference to the said reply notice, instead , the second respondent has observed that no reply was received from the petitioner to the Pre-Revision Notice. Further, as seen from the impugned Assessment Order, the petitioner has not been afforded the right of personal hearing which is mandatory as per Division Bench Judgment of this Court in the case of ***G.V. Cotton Mills Private limited, represented by its Managing Director /Vs/. The Assistant Commissioner (CT), Avarampalayam Assessment Circle, 60 GSTR, 418,*** wherein the Division Bench has held that whether the contesting dealer requests for personal hearing or not, the right of personal hearing is mandatory. In the instant case, as seen from the Assessment order, no personal hearing was afforded to the petitioner. Further, whether the reply sent by the petitioner to the Pre-Revision Notice was received by the second respondent or not is a disputed fact. If, the petitioner is able to establish before the second respondent that reply was received by the second respondent, the said reply ought to have been considered by the second respondent, before passing of the impugned Assessment Order.

7. For the forgoing reasons, and considering the fact that no personal hearing was afforded to the petitioner, this Court is of the considered view that the second respondent has violated the principles of natural justice.

8. In the result, the impugned Assessment Order, dated 02.08.2017 in Assessment No.33685482497/2014-15, is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law. Since it is disputed by the second respondent that the reply notice, dated 28.06.2017 was not received by him, the petitioner is directed to once again send a

reply to the pre revision notice by Registered post with acknowledgement due, within a period of two (2) weeks from the date of receipt of a copy of this order to the second respondent. Thereafter, on receipt of the reply from the petitioner, the second respondent shall pass final orders, within a period of eight weeks, after giving adequate opportunity to the petitioner to place all objections available to them under law and also grant hers the right of personal hearing.

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

Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar(CS)

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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,
Karaikudi Assessment Circle,
Commercial Taxe Office,
No.50/52, Jawahar Street,
Karaikudi.

1CC TO MR. B. ROOBAN, ADVOCATE SR 55613

KK
22/04/2019
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