BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.03.2019**

CORAM
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No. 18824 of 2009
and W.M.P(MD) No.15191 of 2017

Tvl. City Drugs & Surgicals,
represented by its Partner,
R.Muthuganesan S/o.KR. Raju,
No.27, Kannupillai Street,
Karaikudi, Sivagangai District. ... 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 Tax Office,
No.50/52, Jawahar Street,
Karaikudi – 630 001. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings of the second respondent in Assessment No.33505482402/2014-15 dated 02.08.2017 and quash the same.

For Petitioner : Mr.B. Rooban
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 02.08.2017 passed by the second respondent in TIN No.33505482402/2014-15.

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

3. According to the petitioner, they had already filed the monthly returns for the assessment year 2014-15 which was accepted

by the second respondent, under Section 22(2) of the Tamilnadu Value Added Tax Act, 2006. But, by the pre-revision notice, dated 24.03.2017, issued under Section 27 of the Tamilnadu Value Added Tax Act, 2006, the second respondent wanted to revise the assessment. According to the petitioner, on receipt of the pre-revision notice, dated 24.03.2017, they sent a letter dated 07.04.2017 to the second respondent requesting him to produce the copy of the web report, as the revision of assessment was proposed by the second respondent only based on the web report.

4. According to the petitioner, despite receipt of the letter dated 07.04.2017, the second respondent even without furnishing a copy of the web report, passed the impugned assessment order. Aggrieved by the impugned assessment order, dated 02.08.2017, the instant Writ Petition has been filed.

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

6. According to the learned counsel for the petitioner, the second respondent violated the principles of natural justice, by not furnishing a copy of the web report as requested by them by their letter, dated 07.04.2017 and has also not afforded adequate opportunity to place all objections available to them under law and has also not granted the right of personal hearing. He drew the attention of this Court to the impugned assessment order and submitted that by total non application of mind, the second respondent has erroneously observed that the petitioner failed to keep up their promise of providing documents within one month from the date of that letter. By the letter, dated 07.04.2017 the petitioner only requested the second respondent to furnish the copy of the web report and other relating documents to enable them to file a detailed reply to the pre-revision notice dated 24.03.2017 and no assurance as observed in the impugned order was ever made by the petitioner. According to the learned counsel for the petitioner, no personal hearing was also afforded by the second respondent despite a specific request was made in the letter dated 07.04.2017 before passing the impugned assessment order.

7. Per contra, the learned Additional Government Pleader would submit that adequate opportunity was provided to the petitioner to raise all objections available to them under law. According to him, an alternate, efficacious, statutory appellate remedy is available to the petitioner under Section 51 of the TNVAT Act, 2006.

Discussion

8. As seen from the letter, dated 07.04.2017, it is clear that the petitioner requested the second respondent to furnish a copy of the web report as well as other relevant documents and had also sought time to file a reply on receipt of the documents. The

basis for the revision of assessment proceedings is the web report. Without furnishing a copy of the same, as rightly contended by the petitioner, a proper reply to the pre-revision notice dated 24.03.2017 sent by the second respondent could not be sent. Further, according to the petitioner, they have submitted the monthly returns and paid tax which has also been accepted by the second respondent, under Section 22(2) of the TNVAT Act, 2006. According to them, there is no suppression and no wrong claim of input tax credit.

9. It is settled law that adequate opportunity must be granted to the dealer (petitioner) before an assessment order is passed under Section 27 of the TNVAT Act 2006. But, in the instant case, by total non-application of mind, eventhough the petitioner had only requested the second respondent to furnish a copy of the web report, the second respondent under the impugned assessment order has erroneously observed that the petitioner promised that they would give details of documents and requested them to grant one month time for the same. This observation is an absurd observation. Further, no personal hearing was afforded to the petitioner despite a specific request was made by the petitioner in his letter dated 07.04.2017.

10. For the forgoing reasons, this Court is of the considered view that there is total non-application of mind on the part of the second respondent while passing the impugned assessment order and principles of natural justice have been violated, by not affording sufficient opportunity to the petitioner, including granting the right of personal hearing.

11. In the result, the impugned proceedings dated, 02.08.2017 in TIN No.33505482402/2014-15 is hereby quashed and the matter is remanded back to the second respondent, for fresh consideration. The second respondent is directed to pass a fresh order, after affording sufficient opportunity including granting the right of personal hearing to the petitioner to enable the petitioner to raise all objections available to them under law, and the second respondent, shall pass final order on merits and in accordance with law, within a period of Eight (8) weeks from the date of receipt of a copy of this order.

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

Sd/-

Assistant Registrar (CRL SIDE)

// 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 Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001.

1CC TO MR. B. ROOBAN, ADVOCATE SR 55016
1CC TO THE SPL GOVT PLEADER SR 55107

DS
15/04/2019
5C

Order made in
W.P.(MD).No. 18824 of 2017

18.03.2019