BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2019

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.19495 of 2017
and
W.M.P.(MD) No.15797 of 2017

M/s.Sundram Agencies,
16/12, North veli Street,
Madurai 625 001 ... Petitioner

-vs-

1) The Commissioner of
Commercial Taxes,
Chennai.

2) The Commercial Tax Officer,
Tamil Sangam Road Circle,
Commercial Tax Office,
Madurai 625 020 ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari by calling for records in TIN 33684900885/2008-2009 dated 03.03.2017 and the demand made in form O and form RR of same dated on the file of the 2nd respondent and to quash the order passed thereunder.

For Petitioner : M/s.S.Lakshmanan
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 03.03.2017 passed by the second respondent in TIN No.33684900885/2008-2009.

2. It is the case of the petitioner that they are a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to them, they have been regularly filing their monthly returns before the respondents and the same has also been accepted under Section 22(2) of the TN VAT Act, 2006 on deemed assessment basis.

3. According to the learned counsel for the petitioner, the proposed revision of assessment made by the second respondent is beyond the prescribed period as stipulated under section 27(1)(b) of

the TN VAT Act, 2006, which stipulates that the Assessing Authority can revise the assessment only within a period of six years from the date of the assessment. Since the Assessment year is 2008-09, (i.e.,) prior to the amendment, according to the petitioner, the revision of assessment ought to have been made within a period of five years from the date of the original assessment.

4. According to the petitioner, the original assessment order was passed on 14.02.2011 but the proposal to revise the assessment was made by the respondents only on 31.01.2017. Therefore, according to him, the revision of assessment proceedings has been initiated beyond the stipulated period of five years as per Section 27(1)(b) of the TN VAT Act prior to its amendment. Further, the leaned counsel submitted that under the impugned assessment proceedings, no personal hearing was afforded to the petitioner. On both the aforesaid grounds, the instant writ petition has been filed challenging the impugned assessment order.

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

6. This Court has perused and examined the impugned assessment order. The issue regarding Limitation has not been considered under the impugned Assessment order. Further, opportunity of personal hearing was not afforded to the petitioner under the impugned assessment order. It is settled law as laid down by various judicial pronouncements of this Court that personal hearing is mandatory. Further, as seen from the original assessment order dated 14.02.2011, the revision of assessment was proposed to be made by pre-revision notice dated 31.01.2017 and p*rima facie* there seems to be force in the submissions made by the learned counsel for the petitioner that the revision of assessment proceedings has been initiated beyond the stipulated period as prescribed under Section 27(1)(b) of the TN VAT Act, 2006 prior to its amendment.

7. For the forgoing reasons, this Court is of the considered view that the impugned assessment order that has been passed violating the principles of natural justice by not affording an opportunity of personal hearing to the petitioner to raise all objections available to him under law in the revision of assessment proceedings. Further, the issue of Limitation will have to be considered in the light of Section 27(1)(b) of the TN VAT Act, 2006.

8. In the result, the impugned assessment order is hereby quashed and matter is remanded back to the file of the second respondent, who shall pass final orders after affording adequate opportunity to the petitioner to raise all objections available to them under law and also grant them the right of personal hearing and decide the issue of Limitation within a period of eight (08) weeks from the date for receipt of a copy of this order. With these

directions, the **Writ Petition is disposed of**. No costs. Consequently, connected W.M.P.(MD) No.15797 of 2017 is closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-)

To

1) The Commissioner of
Commercial Taxes, Chennai.

2) The Commercial Tax Officer,
Tamil Sangam Road Circle,
Commercial Tax Office,
Madurai 625 020.

+1cc to Mr.S.Lakshmanan, Advocate, SR.No.59798
+1cc to Special Government Pleader, SR.No.60114

Order made in
W.P.(MD).No.19495 of 2017
08.04.2019

SP/15.04.2019/3P/5C