BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.03.2019
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos. 21375 & 21376 of 2017
and W.M.P.(MD)Nos. 17670 & 17671 of 2017

D. Manoharan ... Petitioner in both Writ Petitions.

Vs.

1.The Commercial of Commercial Taxes,

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,
Madurai (Rural) South Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai - 625 020. ... Respondents in both Writ Petitions.

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 TIN No.33795162676/2012-2013 and 2013-2014, dated 11.09.2017 respectively, and quash the same.

In both the Writ Petitions

For Petitioner : Mr.B.Rooban

For Respondents : Mr.N. Shanmugaselvam
Additional Government Pleader

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ORDER

These Writ Petitions have been filed challenging the impugned proceedings, dated 11.09.2017 in TIN No.33795162676/2012-2013 and 2013-2014, respectively.

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 the 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, Notice, dated 20.11.2015, the second respondent has proposed to levy penalty

under section 27(3) of the Tamil Nadu Value Added Tax Act, 2006.

4. According to the petitioner, after receipt of the Notice, they have filed their adjournment letter, dated 24.11.2015 requesting the second respondent to grant one month time to file their objections/reply for the notice issued by the second respondent relating to the assessment years 2007-08 to 2011-2012 and filed their reply/objections, dated 22.12.2015 for the assessment year 2012-2013. But, in the impugned assessment order, the second respondent has not considered the objections raised by the petitioner in his reply notice, dated 22.12.2015. 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 22.12.2015 was suppressed by the second respondent. 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 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 impugned assesment order, no personal hearing was afforded to the petitioner. Further, whether the reply sent by the petitioner to the notice was received by the second respondent or not is a disputed question of 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 11.09.2017 in TIN No.33795162676/2012-2013 and 2013-2014, 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 22.12.2015 was not received by him, the petitioner is directed to once again send a reply to the pre-revision notice by a 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 them 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 (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

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,
Madurai (Rural) South Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai, Madurai - 625 020.

+2 CC to M/s.B.ROOBAN, Advocate (SR-55017[F] dated 19/03/2019)

+1 CC to M/s.SPL GP (SR-55317[F] dated 20/03/2019)

KSA

W.P.(MD)Nos. 21375 &
21376 of 2017
18.03.2019

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