BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.02.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No. 12506 of 2016
and W.M.P(MD) No. 9456 of 2016

Tvl. Kasim Textile Mills (P) Limited,
represented by its Director,
A. Sahul Hameed S/o. M. Abdul Kasim,
No.214/138, East Veli Street,
Madurai - 625 001. ... 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,
Chitrakara Street Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai, Madurai - 625 020. ... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate Writ or any Order or direction in the nature of a Writ calling for the records pertaining to the impugned proceedings of the second respondent in TIN No.33424920719/2014-15, dated 15.06.2016 and quash the same and consequently direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B. Rooban

For Respondents : Mr.M. Jeyakumar,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the impugned assessment order, dated 15.06.2016 passed by the second respondent in TIN No.33424920719/2014-15.

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 notice, dated 15.04.2016 and pre-revision notice, dated 21.04.2016, issued to the petitioner, the second respondent proposed to levy penalty under Section 27(3) of the Tamilnadu Value Added Tax Act, 2006. According to the petitioner, on receipt of the notice, dated 15.04.2016, a revised notice, dated 21.04.2016 was also sent. Thereafter, the petitioner sent a detailed reply/objection, dated 27.04.2016 to the second respondent along with the copies of the documents and requested them to drop the proposal.

4. According to the petitioner, despite receipt of the letter dated 27.04.2016, the second respondent has passed the impugned assessment order. Aggrieved by the impugned assessment order, dated 15.06.2016, the instant Writ Petition has been filed.

5. Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mr.M. Jeyakumar, 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 affording 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 passed the assessment order. By the letter, dated 27.04.2016, the petitioner requested the second respondent to drop the proposal. 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 27.04.2016 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 27.04.2016, it is clear that the petitioner requested the second respondent to drop the proposal. The basis for the revision of assessment proceedings is the MIS and Intranet web report. 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 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 drop the proposal, the second respondent under the impugned assessment order has erroneously relied on the MIS and Intranet web report. Further, no personal hearing was afforded to the petitioner despite a specific request was made by the petitioner in his letter dated 27.04.2016.

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, 15.06.2016 in TIN No.33424920719/2014-15 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,
Chitrakara Street Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai, Madurai - 625 020.

+1CC TO MR.ROOBAN, Advocate Sr. No.49260
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 49463

Order made in
W.P.(MD).No. 12506 of 2016
22.02.2019

NSN(CO)
TR (10.05.2019) 5P 5C