BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.02.2019**

CORAM

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.13875 to 13879 of 2016
and
W.M.P.(MD).Nos.10304, 10327 to 10330 of 2016

Tvl.P.Asai Thambi,
Civil Works Contractor,
10-A, Thenolaikara 3rd street,
South Masi Street, Madurai. ... Petitioner in all W.P's

-vs-

The Commercial Tax Officer,
South Avanimoola Street Circle,
Madurai 20. ... Respondents in all W.P's

PRAYER: Writ Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari of any other appropriate writ order or direction in the nature of writ calling for the records on the file of the respondent in TIN.33744841779/2007-08, 2008-09, 2009-10, 2010-11 and 2013-14 dated 27.05.2016, 15.06.2016, 15.06.2016 16.06.2016 & 17.06.2016 respectively and quash the same as invalid, illegal and against the principles of natural justice.

In all Writ Petitions

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.D.Muruganandham,
Additional Government Pleader

COMMON ORDER

Since the issue involved in all the writ petitions are one and the same, all the writ petitions are disposed of by this common order.

2. It is the case of the petitioner that the returns submitted by the petitioner for the assessment years 2007-08, 2008-09, 2009-10, 2010-11 and 2013-14 were accepted by the respondent and his assessments were deemed to be completed on deemed assessment basis as per Section 22(2) of the TNVAT Act, 2006. According to the petitioner, all of a sudden, based on a spot audit by the Enforcement Wing Officers, the respondent issued a pre-revision

notice, seeking to revise the earlier assessment under Section 27 of the TNVAT Act, 2006. A detailed reply was also given by the petitioner on 30.11.2015, wherein, they have stated that the proposal to revise the assessment is unjustified and unlawful. In view of the reasons stated in the reply, he also requested the respondent to afford him the right of personal hearing in the assessment proceedings. After, the respondent received the reply dated 30.11.2015 passed the impugned assessment orders under Section 27(1)(a) of the TNVAT Act, 2006, revising the assessment and directed the petitioner to pay the following towards tax and penalty:-

Sl. No.	W.P.(MD) No.	TIN No. and Year	Tax in Rs.,	Penalty in Rs.,
1	13875 of 2016	33744841779 2007-08	1,48,031/-	2,22,046
2	13876 of 2016	33744841779 2008-09	2,49,623/-	3,74,435/-
3	13877 of 2016	33744841779 2009-10	3,95,460/-	5,93,190/-
4	13878 of 2016	33744841779 2010-11	2,29,169/-	3,36,285/-
5	13879 of 2016	33744841779 2011-12	5,56,345/-	3,06,801/-

Aggrieved over the same, the above writ petitions have been filed challenging the impugned Assessment orders under Section 27(1)(a) of the TNVAT Act, 2006.

3.Heard Mr.A.Chandrasekaran, learned counsel for the petitioner and Mr.D.Murugananadham, learned Additional Government Pleader for the respondent.

4.The learned counsel for the petitioner drew the attention of this Court to the reply dated 30.11.2015 sent by the petitioner to the respondent for the pre-revision notices dated 14.09.2015, 21.09.2015 and 14.10.2015 respectively. According to him, the entire proposal of the respondent to revise the assessment is mainly based on the inspection report. According to him, simply because a statement was recorded in the inspection report, it cannot be presumed to be correct. According to the learned counsel for the petitioner, the petitioner had already opted for compounding assessment and thereby filed respective monthly returns with the respondent, which were also accepted by them and tax was also paid by the petitioner.

5.According to the learned counsel for the petitioner, even though several objections were raised by the petitioner opposing the revision of assessment, the respondent under the impugned order has not considered the same in accordance with law, but instead, has passed a cryptic one line order, rejecting the objections raised by the petitioner. According to the learned counsel for the petitioner, in the reply, a specific request was made to afford an opportunity of personal hearing to the petitioner in the revision proceedings along with permitting the petitioner to produce documentary evidence. Even that request was also not acceded to by the respondent.

6. Per contra, the learned Additional Government Pleader for the respondent would submit that there is an alternative efficacious appellate remedy available to the petitioner to challenge the impugned assessment orders under Section 51 of the Act. Therefore, this Court cannot interfere with the impugned order under Article 226 of the Constitution of India.

Discussion:

7. The receipt of the reply, dated 30.11.2015 sent by the petitioner to the pre-revision notices, dated 14.09.2015, 21.09.2015 and 14.10.2015 sent by the respondent has not been disputed by the respondent in the impugned order. As seen from the reply sent by the petitioner, he has submitted that he has already opted for compounding assessment and has also filed monthly returns and paid the tax, which has also been accepted by the respondent. According to the petitioner, the respondent initiated revision of assessment proceedings to revise the assessment orders based on the inspection made by the Enforcement Wing Officials on 18.06.2015. In his reply, the petitioner has stated that based on the inspection report, the respondent cannot revise the earlier assessment.

8.It is also the case of the petitioner, that while revising the assessment, the respondent failed to deduct the following expenses, which do not involve any transfer of property while arriving at Gross Profit and Taxable turnover. (a)Postage and Telephone charges (b)Sales tax paid (c)Wages and Coolie (d)JCB charges (e)Mixer machine charge (f)Labour Welfare expenses (g) Service charges (h)Excavation charges (I)Tender Expenses (j) Consulting fees (k)Printing stationeries (l)Salary and bonus (m) Travelling expenses (n)Bank interest (o)Travelling expenses.

9.The learned counsel for the petitioner has also referred to various judicial pronouncements in support of his defence in his reply and has specifically requested to grant him an opportunity for personal hearing in the revision of assessment proceedings initiated by the respondent under Section 27 of the TNVAT Act, 2006.

10. Even though, the respondent in the impugned order has acknowledged receipt of the objections raised by the petitioner, has passed a non-speaking order, without considering all the objections raised by the petitioner, in the reply dated 30.11.2015. As seen from the impugned orders, personal hearing was also not afforded by the respondent to the petitioner, even though a specific request was made.

11. A Division Bench of this Court by its order dated 16.03.2018 in W.A.Nos.234 to 240 of 2015 in the case of ***G.V.Cotton Mills (P) Ltd., vs., the Assistant Commissioner (CT)*** has held that the right of personal hearing to the assessee is mandatory even if the assessee fails to submit objections to the pre-assessment notice. Paragraph-10 of the said order is extracted hereunder:-

> "***DENIAL OF PERSONAL HEARING:***
> *....10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."*

12.Therefore, the revision of assessment made by the respondent under Section 27 of the TNVAT Act, 2006 without affording an opportunity of personal hearing to the petitioner is bad in law and violates the principles of natural justice.

13. In the result, the impugned orders, dated 27.05.2016, 15.06.2016, 15.06.2016 16.06.2016 & 17.06.2016 respectively passed by the respondent in TIN. No.33744841779/ 2007-08, 2008-09, 2009-10, 2010-11 and 2013-14 respectively is hereby quashed and the matters are remanded back to the respondent for fresh consideration and the respondent is directed to afford sufficient opportunity to the petitioner including the right of personal hearing and pass final orders under Section 27 of the TNVAT Act, 2006 on merits and in accordance with law within a period of eight weeks from the date of receipt of a copy of this order.

14. With the aforesaid directions, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer,
South Avanimoola Street Circle,
Madurai 20.

+5 CC to M/s.A.CHANDRASEKARAN, Advocatein SR Nos.48825 to 48829

W.P.(MD).Nos.13875 to
13879 of 2016
21.02.2019

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KK/TK/05.04.2019 : 5P/7C