EFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.03.2019
CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.14525 of 2016
and
MP.(MD).No.10782 of 2016

Tvl.Waalai Chettinadu Mess,
Rep. by its Partner: M.S.Mathuran,
No.12, Lady Doak College Road,
Madurai 625 002. ... Petitioner

Vs

The Commercial Tax Officer-III (Main),
Chokkikulam Assessment Circle,
Madurai-20. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records on the file of of the respondent in TIN 33385003094/2014-15, dated 23.06.2016 and quash the same as invalid, illegal and against the principles of Natural Justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.D.Muruganantham
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned assessment order passed by the respondent in TIN 33385003094/2014-15, dated 23.06.2016.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 doing restaurant business. It is their case they had filed returns under Section 8(1)(a) of the Tamil Nadu Value Added Tax Act, 2006, which is also accepted by the respondent and tax has also been paid. Thereafter, the respondent inspected the petitioner's business premises. It is the case of the petitioner that even before the completion of the deemed assessment under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006, the Enforcement Wing of the respondent inspected the petitioner's business premises on 07.11.2014, the estimation of turnover was made by the respondent and the respondent held that since the turnover exceeded Rs.50 lakhs, the petitioner is not eligible to pay tax at compounded rate under Section 8(1)(a) of the Tamil Nadu Value Added Tax Act, 2006. It is the case of the petitioner that based on the one day sales, the respondent cannot estimate the total taxable turnover. But, according to the petitioner, in the instant case, the impugned assessment order has been passed based on the one day sales turnover of the petitioner (i.e., on 07.11.2014). In such circumstances, the instant Writ Petition has been filed, challenging the impugned assessment order.

3.It is also the case of the petitioner that all the objections raised by the petitioner in his reply, dated 04.01.2016 has not been duly considered by the respondent in the impugned assessment order. It is also the case of the petitioner that no sufficient opportunity was given to the petitioner to raise all objections before the respondent and therefore there is violation of the principles of natural justice.

4.Heard Mr.A.Chandrasekaran, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent.

5.This Court has perused the impugned assessment order. The petitioner by its reply, dated 04.01.2016, has given a detailed reply citing various authorities and has submitted that based on one day sales, the respondent cannot revise the earlier assessment. In his reply, the petitioner had also asked for a personal hearing. But in the impugned assessment order, the objection regarding assessment based on one day sales on the date of inspection by the Enforcement Wing of the respondent (i.e., on 07.11.2014), has not been duly considered by the respondent. Even though, the petitioner had cited various authorities, which according to him, support his case the said authorities have not been duly considered by the respondent. Instead the following observations made in the impugned assessment order:-

"*...The objections filed by the dealers were carefully considered. It is the predominant contention of the dealer that entire sales turnover was estimated by the assessing authority based on one day sales which is not correct since the sales depends on so may factors like shut down of hotel due to political bandh, labour strike, etc. Normally 35 days in a year including declared 10 days of national holidays, during the period which the hotel was not run. No one presumed the uniform sales throughout the year due to heavy competition in this line of trade. The floating of population is also a factor to be considered which depends upon the various factors such as festival, marriage functions, harvest period, political gathering sometimes even weather conditions like rain also will affect the floating population. In support of their contentions, they cited several judicial pronouncements as stated supra...*"

6.The petitioner is doing restaurant business and it is common knowledge that the sales turnover varies from day to day. On working days it will be lesser and on festival day and public holidays it will be generally higher. Therefore, one day sales turnover cannot be the basis for assessing the total taxable turnover. The following Judgements of this Court, namely *a)State of Tamil Nadu Vs. New Kamaliya Hotel* reported in *[2006] 147 STC 111 (Mad) and b)State of Tamil Nadu Vs. Hotel Ashok Bhavan* reported in *[2013] 60 VST 79 (Mad)*, support of the case of the petitioner.

7.Eventhough, the above referred authorities were placed by the petitioner before the respondent, the said authorities have not been considered by the petitioner. Further, in the instant case, no personal hearing was granted to the petitioner, eventhough a specific request was made by the petitioner, in his reply dated 04.01.2016. It is well settled that personal hearing will have to be granted to the assessee under the Tamil Nadu Value Added Tax Act, 2006 as held by the internal circular bearing circular No.7 of 2013 of the Principal Commissioner of Commercial Tax. The Hon'ble Division Bench of this Court has also held in the case of *G.V.Cotton Mills (P) Limited Vs. The Assistant Commissioner (CT)* in *W.A.Nos.234 to 240 of 2015*, dated *16.03.2018* that eventhough personal hearing is not sought for by the assessee, it is mandatory on the part of the respondent to grant a personal hearing.

8.For the foregoing reasons, this Court is of the considered view that the impugned assessment order passed by the respondent in TIN 33385003094/2014-15, dated 23.06.2016, is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders, after giving sufficient opportunity of hearing to the petitioner to raise all objections available to him under law and also grant him the right of personal hearing and pass final orders within a period of eight weeks from the date of receipt of a copy of this order.

9.With the aforesaid directions, the Writ Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To
The Commercial Tax Officer-III (Main),
Chokkikulam Assessment Circle, Madurai-20.

+1. C.C. to M/S.A.Chandrasekaran, Advocate SR.No. 51783
+1 cc to Special Government Pleader, SR.No. 51977, 52424

W.P.(MD)No.14525 of 2016
and
MP.(MD).No.10782 of 2016
05.03.2019

SP/05.04.2019/3P-4C