BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.620 of 2017
and
W.M.P.[MD]Nos.484 & 5223 of 2017

Tvl. Sri Guruvayurappan Traders,
Represented by its Partner Tmt. G.Kumaresan,
42 C, Viruthunagar Road,
Aruppukottai,
Viruthunagar District. : Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by it's Secretary to Government,
Department of Commercial Taxes,
Fort St. George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Assistant Commissioner (C.T) (FAC),
Aruppukottai Assessment Circle,
Aruppukottai,
Viruthunagar District. : Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the assessment order passed by the third respondent in his proceedings in TIN 33745803243 / 2013-14 dated 25.11.2016 (received by the petitioner on 12.12.2016), quash the same and to direct the third respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearing.

For Petitioner : Mr.M.Md.Ibrahim Ali
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 25.11.2016, passed in TIN No.33745803243/2013-14.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. (hereinafter referred to as 'TNVAT Act, 2006'). According to him, he has regularly been filing his monthly returns, which was accepted by the respondents under Section 22(2) of the TNVAT Act, 2006. According to the petitioner, there was an inspection by the Enforcement Wing Officials in the petitioner's business premises on 26.09.2015 and the officers alleged that there was a purchase suppression based on the verification of the purchase details from the other end dealers' Annexure - II through the Department's web site. According to the petitioner, the Enforcement Wing Officers estimated the sales suppression based on the purchase suppression at Rs.62,42,468/-. According to the petitioner, the Enforcement Wing Officers have also proposed to levy penalty at 150% of the tax due under Section 27(3) (c) of the TNVAT Act, 2006. According to the petitioner, without making any independent enquiry, based on the Enforcement Wing Officers' report, the respondent issued a pre revision notice, dated 31.08.2016, proposing to revise the assessment based on the Enforcement Wing Officer's report. According to the petitioner, a representation was also sent on 14.09.2016, wherein, the petitioner has made a request to the third respondent to grant one month time to submit reply. Thereafter, according to the petitioner, without affording sufficient opportunity and mainly based on the Enforcement Wing Officer's report, which is not an independent source of information, the third respondent had passed the impugned assessment order, dated 25.11.2016, confirming the quantum of tax and penalty claimed in the pre-revision notice, dated 31.08.2016, for the assessment year 2013-2014. Aggrieved by the assessment order dated 25.11.2016, for the assessment year 2013-2014, the instant Writ Petition has been filed.

3.Heard Mr.M.Md.Ibrahim Ali, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader for the respondents.

4.The learned counsel for the petitioner drew the attention of this Court to the decision of the Honourable Division Bench in the case of **Madras Granites (P) LTD Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another**, reported in **146 STC 642**, and submitted that the Assessing Officer will have to independently pass the assessment order and cannot blindly accept the report of the Enforcement Wing Officers of the Department.

5.Relying upon the said judgment, the learned counsel for the petitioner would contend that in the instant case also, there was no independent assessment made by the assessing officer but, instead the assessment officer has blindly accepted the enforcement wing officer's report. The learned counsel for the petitioner also drew the attention of this Court to the case of **JKM Graphics Solutions Private Limited, Vs. CTO, Vepery Assessment Circle** reported in **99 VST 343** and submitted that the Assessing Officer ought not to have blindly accepted the enforcement wing officer's report and should have verified the same independently. Further, the learned counsel for the petitioner would contend that in the instant case, no personal hearing was afforded to the petitioner. Therefore, according to him, the assessment order has been passed by total non-application of mind and there is violation of principles of natural justice.

6.Per contra, the learned Additional Government Pleader for the respondents would submit that the only remedy available to the petitioner is to file an appeal under Section 51 of the TNVAT Act, 2006.

Discussion:

7.This Court has perused and examined the impugned assessment order. As seen from the impugned assessment order, the third respondent has accepted the report of the Enforcement Wing Officer in toto and also accepted their proposals in toto. As seen from the impugned assessment order, no independent verification was done by the third respondent like cross checking with the other end officers with whom, the other end sellers had reported the sales. As rightly contented by the learned counsel for the petitioner, the decisions rendered by the Honourable Division Bench of this Court in the case of **Madras Granites (P) LTD Vs. Commercial Tax Officer, Arisipalayam Circle, Salem and another**, reported in **146 STC 642**, and the case of **JKM Graphics Solutions Private Limited, Vs. CTO, Vepery** reported in **99 VST 343**, are squarely applicable to the facts of the instant case. Further, as seen from the impugned assessment order, no personal hearing has been afforded to the petitioner.

8.For the forgoing reasons, this Court is of the considered view that there is total non-application of mind on the part of the third respondent and the third respondent has also violated the principles of natural justice by not affording adequate opportunity to the petitioner to raise all objections available to him under law.

9.Accordingly, the impugned assessment order, dated 25.11.2016, is hereby quashed and the matter is remanded back to the third respondent for fresh consideration and the third respondent shall pass final orders, after giving adequate opportunity to the petitioner to raise all objections available to him under law and also affording him the right of personal hearing, within a period of eight [8] weeks from the date of receipt of a copy of this order.

10.While granting stay, a conditional order has been passed by this Court in W.M.P.[MD]No.484 of 2017 in W.P.[MD]No.620 of 2017. The learned Counsel for the petitioner submitted that the said conditional order has already been complied with by the petitioner, which is also not disputed by the learned Additional Government Pleader for the respondents. Hence, this Court directs the third respondent to properly consider the same while passing final orders.

11.With the above directions, this Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar(CS)

MR

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes,
Fort St. George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai - 600 005.

3.The Assistant Commissioner (C.T) (FAC),
Aruppukottai Assessment Circle,
Aruppukottai, Viruthunagar District.

+1CC TO MR.M.MD.IBRAHIM ALI, Advocate Sr. No.57335
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 57944

ORDER MADE IN
W.P.[MD]No.620 of 2017
27.03.2019

TR (27.04.2019) 4P 6C