BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 14.03.2019

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THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P(MD)No.16920 of 2016
and
W.M.P.(MD)Nos.12272 & 12273 of 2016

TVL.S.R. & Co.,
Represented through its proprietor,
P.Sankaramahalingam ..Petitioner

Vs.

1.The Deputy Commissioner (Commercial Tax),
Tirunelveli.

2.The Commercial Tax Officer,
Tirunelveli Bazaar, Tirunelveli.

3.The Commercial Tax Officer,
Tiruvottiyur, Chennai.

4.The Proprietor,
Sun Moon Enterprises,
29/3/213, Shesasala Gramani Street,
Kaladipet, Tiruvottiyoor, Chennai-19. ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the records relating to the proceedings of the second respondent in TIN/33605640832/2012-2013, dated 12.05.2015 and quash the same.

For Petitioner :Ms.B.Rajathi
for
Mr.R.Balakrishnan

For R1 to R3 :Mr.N.Shanmugaselvam
Additional Government Pleader

ORDER

The instant writ petition has been filed challenging the assessment order, dated 12.05.2015 passed by the second respondent in TIN/33605640832/2012-2013.

2.It is the case of the petitioner that they are a dealer registered under the Tamil Nadu Value Added Tax Act, 2006. It is their case that they are doing Oil business and they have been reporting all the purchases to the second respondent and paying the tax regularly. But it is their case that even without affording an opportunity to raise all objections available to them under law, to the pre-revision notice, dated 19.02.2015, the second respondent has passed the impugned assessment order. According to them, the invoice was raised by the other end seller, viz., the fourth respondent on 21.09.2012 and the other end seller had also paid tax to the sales effected to the petitioner. But under the impugned assessment order even after payment of tax, the second respondent has once again in the assessment order, has directed the petitioner to pay tax for the same invoice along with interest for the delayed payment. Under such circumstances, the instant writ petition has been filed challenging the impugned assessment order.

3.Heard Ms.B.Rajathi, learned counsel appearing for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondents 1 to 3.

4.According to the learned counsel for the petitioner under the impugned assessment order, the date of cancellation of registration of the other end seller viz., the fourth respondent has not been disclosed. According to her, the tax has already been paid by the fourth respondent for the sale effected to the petitioner under invoice dated 01.10.2012. The sale effected by the fourth respondent to the petitioner has also been reported by the other end seller to the second respondent, as seen from annexure II to Form I. But without affording an opportunity, the second respondent has passed the impugned assessment order directing the petitioner to pay a sum of Rs.31,200/- as tax, which according to the learned counsel for the petitioner, has already been paid by the other end seller viz., the fourth respondent.

5.Per contra, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that under Section 19 (15) of the Tamil Nadu Value Added Tax, 2006, where a registered dealer has purchased any taxable goods from another dealer and has availed input tax credit in respect of the said goods and if the registration certificate of the selling dealer is cancelled by the appropriate registering authority, such registered dealer, who has availed by way of input tax credit, shall pay the amount availed on the date from which the order of cancellation of the registration certificate takes effect. According to the learned Additional Government Pleader, in the instant case, the registration certificate for the other end seller viz., the fourth respondent was cancelled by the department and therefore, the petitioner is liable to pay tax for the purchase effected by them from the fourth respondent. Further, it is his case that an alternative efficacious appellate remedy is available to the petitioner as against the impugned assessment order, which has not been exercised by the petitioner.

6.This Court has examined the impugned assessment order. As seen from the impugned assessment order, the date of cancellation of the registration certificate of the fourth respondent has not been disclosed. There is an entry which disclosed the name of the buyer as S.R. &Co., which is the petitioner and the value of the goods sold to the petitioner is disclosed as Rs.6,24,000/- and tax of Rs.31,200/-, which is identical with invoice value dated 01.10.2012, by which, the petitioner had purchased the goods from the fourth respondent, who is the other end seller. As seen from annexure II filed by the fourth respondent, the tax amount of Rs.31,200/- has also been paid by him for the said sale effected to the petitioner. All these factors have not been considered in the impugned assessment order. If the petitioner was afforded sufficient opportunity to place all objections by filing supporting documents, the impugned assessment order may not have been passed. Further, in the instant case, no personal hearing was afforded to the petitioner by the second respondent. Therefore, in the considered view of this Court, the second respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner to place all objections available to them under law.

7.Accordingly, the impugned assessment order is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent is directed to pass final orders after affording sufficient opportunity to the petitioner to raise all objections available to him under law, including granting the right of personal hearing, within a period of eight weeks from the date of receipt of a copy of this order.

8.In the result, this writ petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Crl Side)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Deputy Commissioner (Commercial Tax),
Tirunelveli.

2.The Commercial Tax Officer,
Tirunelveli Bazaar, Tirunelveli.

3.The Commercial Tax Officer,
Tiruvottiyur, Chennai.

+1cc to M/s.Special Government Pleader,SR.No. 54285

W.P(MD)No.16920 of 2016
14.03.2019

KK/SAR/02.04.2019/ 3P- 5C