BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.02.2019
CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE
W.P.[MD]No.17177 of 2016
and
W.M.P.[MD]Nos.12456 & 12457 of 2016

Tvl. Sri Ramu Furniture Company,
Rep. By its Proprietor,
R.Muruganandam,
No.42, Thalayari Street,
Pattukkottai,
Thanjavur District - 614 601. .. Petitioner

Vs.

The Commercial Tax Officer,
Pattukkottai - I Assessment Circle,
Pattukkottai - 614 601,
Thanjavur District. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records of the respondent in TIN No.33784161787 / 2014 - 2015 dated 03.08.2016 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.D.Muruganantham
Additional Government Pleader

O R D E R

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The instant writ petition has been filed challenging the Assessment order dated 03.08.2016 passed by the respondent in TIN 33784161787/2014-2015.

2.The case of the petitioner is that during inspection of his business premises on 21.04.2015, the enforcement wing officers worked out a deficit stock discrepancy of Rs.17,22,691/- by taking the opening stock of the previous year ie., 2014 - 2015 instead of taking the opening stock of the year 2015 - 2016 and had sent a revision notice on 18.11.2015 in TIN No.33784161787 / 2014 - 2015, alleging discrepancy of Rs.17,22,691/- reporting the turnover at Rs.71,56,680 instead of Rs.49,39,060/-, proposing to levy tax at 14.5%. On 02.12.2015, the petitioner had also sent a reply, objecting the estimated deficit stock. Even thereafter, the respondent has passed the impugned assessment order dated 03.08.2016, directing the petitioner to pay a sum of

Rs.4,69,536/- (Rupees Four Lakh Sixty Nine Thousand Five Hundred and Thirty Six only) as penalty, without affording an opportunity of personal hearing to the petitioner. In such circumstances, the writ petition has been filed.

3.Heard Mr.K.Soundararajan, learned counsel appearing for the petitioner and Mr.D.Muruganatham, learned Additional Government Pleader appearing for the respondent.

4.According to the learned counsel for the petitioner, personal hearing is mandatory as per circular, dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5. He referred the relevant portion of the circular, which is extracted hereunder:-

> *3.In the light of the above, the following circular instructions are issued which must be scrupulously followed by assessing officers while passing assessment orders. Joint Commissioners/ Deputy commissioners should verity at random the assessment orders passed by the Assessing Officer while taking up cursory inspection and ensure compliance with these basic procedures while passing orders.*
>
> ***a) Passing of orders:***
>
> *Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process.*
>
> *i) After issue of notice calling for the objections, if any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.*
>
> *ii) objections filed by the dealer on the pre assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised, in short, the speaking order which is complete shall be passed.*
>
> *iii) As the provision in the TNVAT Act stipulates the conditions or granting of personal hearing, it may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not.*

5.The learned counsel for the petitioner also drew the attention of this Court to the Hon'ble Division Bench Judgment of this Court passed in a batch of writ petitions dated 29.06.2017 in the case of ***Tvl. Balaji Super Market and others Vs. The State of Tamil Nadu, represented by it's Secretary to Government and***

others, wherein the Hon'ble Division Bench of this Court has observed that right of personal hearing is mandatory. In that case, since the assessing officer did not follow the procedure including the right of personal hearing, the Hon'ble Division Bench of this Court had quashed the assessment orders as well as the notices of demand.

6.In the light of the above submissions, the learned counsel appearing for the petitioner prayed that the impugned demand must be quashed.

7.Per contra, the learned Additional Government Pleader appearing for the respondents would submit that the Assessing Officer issued revision notice under Section 28(1) of the TNVAT Act 2006 to the petitioner, which was received by the petitioner on 18.11.2015. On receipt of the notice, the petitioner sent a reply on 02.12.2015 objecting the stock discrepancy detected by the Enforcement Wing Officers. The learned Additional Government Pleader further submitted that only after careful examination of the reply sent by the petitioner to the revision notice dated 18.11.2015, the Assessing Officer passed the impugned order dated 30.08.2016. Therefore, according to the learned Additional Government Pleader, sufficient opportunity was given to the petitioner before passing the impugned demand.

8.As seen from the circular dated 03.02.2014 issued by the Principal Secretary/Commissioner of Commercial Taxes, Chepauk, Chennai-5, which is also not disputed by the learned Additional Government Pleader, it is clear that the petitioner ought to have been given an opportunity of personal hearing, whether he had opted for the same or not. Moreover, the petitioner had opted for an opportunity of personal hearing in his reply dated 02.12.2015. The Hon'ble Division Bench of this Court by its Judgment dated 29.06.2017 in a Batch of writ petitions in the case of ***Tvl. Balaji Super Market and others Vs. The State of Tamil Nadu, represented by it's Secretary to Government and others***, has also held that the procedure which includes the right of personal hearing, if not followed by the Assessing Officer amounts to violation of principles of natural justice.

9.In the instant case, it is the case of the respondent that a revision notice was issued to the petitioner, which was received by him. The petitioner had also sent a reply to the revision notice dated 02.12.2015, which was also carefully examined and therefore, sufficient opportunity has been afforded to the petitioner. As seen from the impugned demand, it is claimed by the respondent that a deficit stock of goods of Rs.17,22,691/- was accepted by the petitioner before the inspecting officers and the petitioner also rendered necessary statement before them. Hence, the petitioner has wrongly reported the total taxable turnover of Rs.49,39,060/- instead of Rs.71,56,680/-.

10.Considering all the aforesaid facts and also considering the circular dated 03.02.2014 issued by the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-5 as well as following the Hon'ble Division Bench judgment of this Court referred to supra, this Court is of the considered view that the respondent has violated the principles of natural justice by not affording sufficient opportunity including granting the right of personal hearing to the petitioner before passing the impugned order.

11. In the result, the order impugned dated 03.08.2016 and the notice dated 18.11.2015 are hereby quashed and the writ petition is allowed and the matter is remanded back to the respondent for fresh consideration and the respondent after affording sufficient opportunity to the petitioner including the right of personal hearing, shall pass fresh orders on merits and in accordance with law within a period of twelve(12) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CRL.SIDE)

// True Copy //

/ /2020
Sub Assistant Registrar(CS)

MR
To
The Commercial Tax Officer,
Pattukkottai - I Assessment Circle,
Pattukkottai - 614 601,
Thanjavur District.

+1 CC to Mr.K.SOUNDARARAJAN, Advocate (SR-47508[F] dated 15/02/2019)
+1 CC to SPL GP (SR-48084[F] dated 19/02/2019)

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