BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:
THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.18102 of 2016
and
W.M.P.[MD]No.13055 of 2016

Tvl. Kayaar Exports (P) ltd.,
Represented by R.Venkatesan Authorised Signatory,
2/3, M.Duraisamipuram,
Nalattinputhur Post,
Kovilpatty. : Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by its Secretary to Government,
Department of Commercial Taxes and Registration Department,
Fort St. George,
Chennai - 600 009.

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

3.The Commercial Tax Officer (Main),
C.T. Building, Ettayapuram Road,
Kovilpatty. : 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 revision of Assessment order passed by the third respondent in his proceedings in TIN No.33125941130/2013-2014 dated 29.08.2016 (received by the petitioner on 29.08.2016) and quash the same and to direct the third respondent to pass fresh order after affording opportunity of personal hearing for the assessment year 2013-2014.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

O R D E R

The instant Writ Petition has been filed challenging the impugned order dated 29.08.2016 passed by the third respondent, in TIN No.33125941130/2013-14.

2.It is the case of the petitioner that even without affording opportunity to the petitioner, the third respondent has *Suo Motu* revised the earlier assessment order under Section 84 of the TNVAT Act, 2006. According to the petitioner, he has paid the tax as per the earlier assessment order dated 18.08.2016. But, in the impugned proceedings, the petitioner has enhanced the assessment by directing the petitioner to pay penalty in addition to tax. Aggrieved by the same, the writ petition has been filed.

3.Heard Mr.M.Md.Ibrahim Ali, learned Counsel for the petitioner and Mr.M.Jeyakumar, learned Additional Government Pleader for the respondents.

4.According to the learned Counsel for the petitioner, the petitioner has paid the tax after the impugned order dated 29.08.2016 was made against him. According to the learned Counsel for the petitioner, under the proviso to Section 84(1) of the TNVAT Act, 2006, any rectification of the assessment order which has the effect of enhancing an assessment or penalty shall not be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard. According to the learned Counsel for the petitioner, in the instant case, no such opportunity was afforded to the petitioner.

5.Per contra, the learned Additional Government Pleader for the respondents would submit that an alternate efficacious appellate remedy is available to the petitioner as against the impugned order and therefore, the Writ Petition is not maintainable.

Discussion:

6.Section 84 (1) of the Tamil Nadu Value Added Tax Act, 2006, reads as follows:

> *"Section 84. Power to rectify any error apparent on the face of the record.-*
>
> *(1) An assessing authority or an appellate or revising authority (including the Appellate Tribunal) may, at any time within five years from the date of any order passed by it, rectify any error apparent on the face of the record:*
>
> *Provided that no such rectification which has the effect of enhancing an assessment or any penalty shall be made unless such authority has given notice to the dealer and has allowed him reasonable opportunity of being heard."*

7.It is evident from the proviso to Section 84 (1) of the Act that before effecting enhancement of an assessment or any penalty, the third respondent will have to give adequate opportunity to the petitioner before passing an order under Section 84(1) of the Act. In the instant case also, there has been an enhancement of assessment under the impugned order dated 29.08.2016, as the petitioner has been directed to pay penalty which was part of the earlier assessment order. But as seen from the impugned order, *Suo Motu*, without affording opportunity to the petitioner, the said order has been passed by the third respondent, which violates the proviso to Section 84(1) of the TNVAT Act. Therefore, this Court is of the considered view that the impugned order dated 29.08.2016 has to be quashed and the matter should be remanded back to the third respondent for fresh consideration in accordance with law.

8.In the result, the impugned order dated 29.08.2016 passed by the third respondent is hereby quashed and the matter is remitted back to the third respondent for fresh consideration and the third respondent shall after affording sufficient opportunity to the petitioner, including the grant of personal hearing pass final orders within a period of eight [8] weeks from the date of receipt of a copy of the order.

9.With the aforesaid direction, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Secretary to Government,
State of Tamil Nadu,
Department of Commercial Taxes and Registration Department,
Fort St. George, Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
2^{nd} Floor, Elilagam,
Chepauk, Chennai – 600 005.

3.The Commercial Tax Officer (Main),
C.T. Building, Ettayapuram Road,
Kovilpatty.

+1 CC to M/s.MOHAMED IBRAHIM ALI, Advocate in SR-56471
+1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No.56553

W.P.[MD]No.18102 of 2016
25.03.2019

MR
PK/22.04.2019 : 3P/6C