BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.18650 of 2016
and
W.M.P(MD) No.13494 of 2016

Tvl.Baghyalakshmi Timber Traders,
rep., by its proprietor Ramar, ... Petitioner

Vs

The Commercial Tax Officer (Main),
Commercial Tax Department,
Srivilliputhur,
Virudhunagar District, ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the respondent herein in TIN.No.33766083562/2014-15 dated 29.07.2016 and quash the same.

For Petitioner : Mr.T.Bashyam

For Respondent : Mr.N.Shanmugaselvam
Additional Government Pleader

ORDER

The instant writ petition has been filed challenging the Assessment order dated 29.07.2016 passed by the respondent in TIN.No.33766083562/2014-15.

2.The case of the petitioner is that during inspection of his business premises, the Enforcement Wing Department found some defects. The Enforcement Wing Department got one statement from the petitioner and they received Rs.2,000/- (Rupees Two Thousand only) as compounding fee. Based on the report of the Enforcement Wing Department, the respondent issued pre-revision notice on 30.12.2015. On receipt of the same, the petitioner replied to the respondent that the respondent wrongly levied the tax for the entire turn over and he had all the relevant documents regarding over this. Further, the petitioner requested the respondent to grant time to give further explanations. But, the second respondent without any basis and without giving sufficient opportunity to dispute the payment and also without giving a chance of personal hearing has arbitrarily directed the petitioner to pay the penalty by way of the impugned order dated 29.07.2016. Challenging the same, the instant writ petition has been filed.

3.Heard Mr.T.Bashyam, learned counsel appearing for the petitioner and Mr.N.Shanmugaselvam, 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 respondent would submit that there is an alternative efficacious appellate remedy available to the petitioner as against the impugned assessment order under Section 51 of the TNVAT Act and further submitted that the notice has been issued to the writ petitioner on 30.12.2015 and the same was received by the writ petitioner on 04.01.2016. The writ petitioner sought for extension of time on 18.01.2016 to file objections to the show cause notice. The petitioner filed objection on 20.06.2016 and the copy of the detailed objections was not filed before this Court. The objection filed by the petitioner has been considered and thereafter, the impugned order has been passed by the respondent. According to the learned Additional Government Pleader, sufficient opportunity was given to the petitioner before passing the impugned demand. Hence, this writ petition is liable to be dismissed.

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 personal hearing, whether he had opted for the same or not. 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 pre-revision notice was issued to the petitioner, which was received by him. As seen from the impugned demand, it is claimed by the respondent that the petitioner did not pay huge amount of tax for the purchase of goods. The source for value of the goods was obtained by the respondent only from their own website and not from the petitioner, either through his website or from any other documents, like invoice, etc., received from him or from any independent source.

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

respondents have violated the principles of natural justice by not affording sufficient opportunity including the right of personal hearing to the petitioner before passing the impugned order.

11. In the result, the orders impugned dated 29.07.2016 is hereby quashed and the writ petition is allowed and the matter is remanded back to the respondent for fresh consideration and the second 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 eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected W.M.P(MD) No. 13494 of 2016 is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

Sub Assistant Registrar(CS)

To

The Commercial Tax Officer (Main),
Commercial Tax Department,
Srivilliputhur,
Virudhunagar District.

+1 CC to MR.T.BASHYAM, Advocate (SR-49430[F] dated 25/02/2019)

W.P.(MD)No.18650 of 2016
and
M.P(MD) No.13494 of 2016
25.02.2019

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