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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P. (MD) No.19501 of 2016

and

W.M.P. (MD) No.14064 of 2016

Tvl.Sivapriya Agency,
Represented by its Proprietor
B.Sivaperumal, aged about 41 years,
S/o.Balakrishnan,
No.34-A/1, Old Vetrilaikadaki Lane,
Swamy Sannathi Street,
Madurai-625 001.

... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
Office of the Principal and Special-Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
Chitrakara Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road,
Madurai-625 020.

... Respondents

PRAYER: Writ 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 proceedings of the second respondent in TIN No.33134921703/2011-12, dated 30.08.2016 and quash the same.

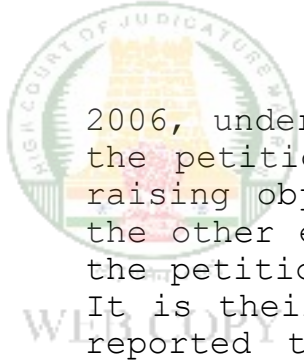
For Petitioner : Mr.B.Rooban

For Respondents : Mr.D.Muruganantham
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned assessment order passed by the second respondent in TIN No.33134921703/2011-12, dated 30.08.2016.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and he has filed his annual returns and the same has been accepted by the second respondent under Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006. According to the petitioner, the second respondent proposed to revise the assessment under Section 27 of the TNVAT Act,



2006, under the pre-revision notice dated 29.06.2016. According to the petitioner, a detailed reply dated 26.07.2016 was sent by him raising objections. According to the petitioner, for the fault of the other end seller for non-reporting of sales to the respondents, the petitioner who is a purchaser cannot be made liable to pay tax. It is their case that all the purchases effected by them have been reported to the second respondent and there is no suppression. According to the petitioner, even though objections were raised, the second respondent even without considering the objections raised by the petitioner, has passed the impugned assessment order. In such circumstances, the Writ Petition has been filed.

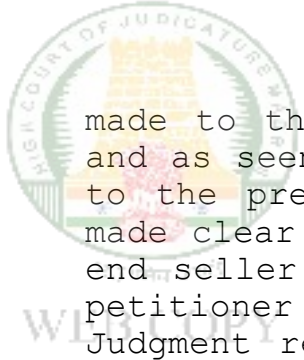
3. Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondents.

4.The learned counsel for the petitioner submitted that the petitioner has not suppressed any sales or purchase and all the sales and purchases have been reported to the second respondent. That being the case, for the fault of the other end seller, the petitioner has been penalized under the impugned assessment order. The learned counsel for the petitioner has relied upon the Judgment of the Hon'ble Division Bench of this Court in the case of **Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Limited** reported in **[2017] 99 VST 341 (Mad)**, which according to him, is identical to the facts of the instant case. He referred to the said Judgment and submitted that the Hon'ble Division Bench of this Court has held that the dealer, who is a purchaser cannot be held liable for non-reporting of sales by the other end seller. Therefore, the learned counsel for the petitioner submitted that the impugned assessment order has not been passed in accordance with law and has to be quashed.

5.The learned Additional Government Pleader for the respondents 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 'Act' and therefore this Writ Petition is not maintainable. Further, it is his case that personal hearing was afforded to the petitioner by the respondents and based on the details and vouchers submitted by the petitioner to the respondents, tax was also reduced under the impugned assessment order. According to the learned Additional Government Pleader, having considered all the objections raised by the petitioner under the impugned assessment order and having granted the right of personal hearing, there is no violation of principles of natural justice.

Discussion:-

6.It is an undisputed fact that the main reason for revision of assessment under Section 27 of the 'Act' by the respondents is that the other end seller has not reported to the respondent the sales



made to the second respondent. As seen from the assessment order and as seen from the reply, dated 26.07.2016 sent by the petitioner to the pre revision notice sent by the second respondent, it was made clear that the purchases made by the petitioner from the other end seller have been duly reported to the second respondent by the petitioner without any suppression. That being the case, the Judgment relied upon by the learned counsel for the petitioner in the case of **Assistant Commissioner (CT), Presently Thiruverkadu Assessment Circle, Kolathur, Chennai Vs. Infiniti Wholesale Limited** reported in **[2017] 99 VST 341 (Mad)**, is squarely applicable for the facts of the instant case. The relevant portion of the aforesaid judgment is extracted hereunder:-

"...To say the least, the show-cause notice issued by the assessing officer proposing to reverse the I.T.C. Availled of by the respondent/writ petitioner/dealer is lacking any valid or sustainable basis. If the sales effected to the writ petitioner/dealer are not disclosed by such a seller either in the form of return filed monthly or the tax collected from the writ petitioner/dealer is not made over to the Department by such seller, the action lies against such a defaulting seller but not against the purchaser. Obviously, the error, if any is not attributable to the writ petitioner/dealer in claiming I.T.C. Based upon the invoice generated by its seller, but it is liable against the so-called seller. Instead of trying to cross verify the I.T.C. Availled of by the petitioner with specific reference to each one component, action is directed by the assessing officer against the writ petitioner/dealer. In our opinion, the learned Single Judge (Infiniti Wholesale Limited Vs. Assistant Commissioner (CT) [2015] 82 VST 457 (Mad)) rightly interfered with, in exercising jurisdiction by setting aside the order of the assessing officer which is prima facie against the principle of law..."

7. For the foregoing reasons, this Court is of the considered view that the respondents have violated the principles of natural justice by not considering the objections raised by the petitioner in the reply dated 26.07.2016, in the light of the Judgment of the Hon'ble Division Bench of this Court referred to *supra*.

8. In the result, the impugned assessment order passed by the second respondent in TIN No.33134921703/2011-12, dated 30.08.2016, is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders, after giving sufficient opportunity to the petitioner to raise all objections available to him under law and ~~also grant him~~ the right of personal hearing and pass final orders within a period of eight weeks from the date of receipt of a copy of this order.



9. With the aforesaid directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Commissioner of Commercial Taxes,
Office of the Principal and Special-Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The Commercial Tax Officer,
Chitrakara Street Assessment Circle,
Commercial Taxes Complex,
Dr. Thangaraj Road,
Madurai-625 020.

+1 CC to M/s. B. ROOBAN, Advocate (SR-52179[F] dated 07/03/2019)

W.P. (MD) No. 19501 of 2016
and
W.M.P. (MD) No. 14064 of 2016
06.03.2019

CS: (06/06/2019) 4P 4C