BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.04.2019**

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD).No.933 of 2017
and
W.M.P.(MD).No.794 of 2017

M/s.Aara Silks,
Rep., by its Partner
Mr.A.N.Mohamed Mohideen,
No.66, North Car Street,
Tirunelveli Town 627 006 ... Petitioner

Vs.

The Commercial Tax Officer,
Tirunelveli Town Assessment Circle,
Tirunelveli. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33465582043/2015-16 quash the impugned revised order dated 16.12.2016 and further direct the respondent to re-do the assessment in accordance with the provisions of the Tamil Nadu Value Added Tax Act, 2006.

For Petitioner : Mr.R.D.Ganesan

For Respondent : Mr.N.Shanmugaselvam,
Additional Government Pleader

O R D E R

The instant writ petition has been filed challenging the Assessment Order dated 16.12.2016 passed by the respondent in TIN 33465582043/2015-16.

2. It is the case of the petitioner that they are a registered dealer under the Tamil Nadu Value Added Tax (TN VAT) Act, 2006. According to the petitioner, they have been filing the monthly returns with the respondent on the due dates and paying tax regularly and the returns have also been accepted by the respondent under Section 22(2) of TN VAT Act, 2006. But, according to the learned counsel for the petitioner, for the Assessment year 2015-16, the respondent proposed to revise the assessment by issuing a revision of assessment notice dated 14.11.2016 for suppression of sales.

3. The petitioner also sent a reply dated 16.12.2016 objecting the revision of Assessment by categorically denying the allegation that there was 'suppression of sales'. In their reply, they have clarified and categorically denied that there was no suppression of sales or purchase. But, by the impugned Assessment Order dated 16.12.2016, the respondent rejected the objections raised by the petitioner and confirmed the demand made by the respondent under the pre-assessment notice dated 14.11.2016. Aggrieved by the impugned assessment order, the instant writ petition has been filed.

4. Heard Mr.R.D.Ganesan, learned counsel for the petitioner and Mr.N.Shanmugaselvam, learned Additional Government Pleader appearing for the respondent.

5. According to the learned counsel for the petitioner, under Section 63-A of the TN VAT Act, 2006, the respondent ought to have awaited for the receipt of the audit statement in Form WW from the petitioner till the end of the year. But in the instant case, the respondent has not followed the procedure as contemplated under Section 63-A of the Act read with (r/w) Rule 16-A of the Tamil Nadu Value Added Tax (TNVAT) Rules, 2007, instead has passed the impugned order even before the end of the year.

6. According to him, the Assessment Order was passed on 16.12.2016, whereas, as per Section 63-A of the TNVAT Act, 2006 r/w Rule 16-A of the TNVAT Rules 2007, the dealer is given an opportunity to furnish a copy of the audit report upto 31.12.2016 for the Assessment Year 2015-16. Further, the learned counsel for the petitioner submitted that in the instant case, no personal hearing was afforded to the petitioner in the Assessment proceedings.

7. Per Contra, the learned Additional Government Pleader appearing for the respondent would submit that the petitioner has been given adequate opportunity to raise all objections available to them under law. Further, it is his case that the petitioner has not raised the plea regarding the audit report as contemplated under Section 63-A of the TN VAT Act, 2006 r/w Rule 16-A of the TNVAT Rules, 2007 in his reply to the pre-revision notice and further, according to him, there is no violation of principles of natural justice by the respondent while passing the impugned assessment order.

8. This Court has perused and examined the impugned Assessment Order. As seen from the impugned Assessment order, as rightly contended by the learned counsel for the petitioner, no personal hearing was afforded to the petitioner in the Assessment proceedings. Section 63(A) of the TN VAT Act, 2006 reads as follows:-

> “**63-A. Accounts to be audited in certain cases.**
> (1) Every registered dealer whose total turnover including zero-rate sale and sale in the course of inter-State trade

or commerce as specified in Section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in a year, exceeds one crore rupees, shall get his accounts in respect of that year, audited by an Accountant and submit a report of such audit in the prescribed Form, duly signed and verified by the Accountant, to the assessing authority, within such period as may be prescribed.

Explanation: For the purpose of this section "Accountant" means, a chartered accountant as defined in the Chartered Accountants Act, 1949 (Central Act 38 of 1949) or a cost accountant as defined in the Cost and Works Accountants Act, 1959 (Central Act 23 of 1959)

(2) If such registered dealer fails to get his accounts audited and submit a report of such audit within the prescribed period, as required in sub-section (1), the assessing authority may, after giving a reasonable opportunity of being heard, direct such registered dealer to pay by way of penalty of such of rupees ten thousand, in addition to any tax payable, in respect of the said period:

Provided that, this section shall not apply to the departments of Central and State Governments, local authorities, the railway administration as defined under the Railways Act, 1989 (Central Act 24 of 1989), the Tamil Nadu State Road Transport Corporations and similar such registered dealers, as way be notified by the Government."

9. Rule 16-A of the TN VAT Rules, 2007 reads as follows:-

"**16.A. Procedure for Filing Audit Report:**

(1) Every Registered dealer liable to get his accounts audited as per sub-section (1) of Section 63-A shall furnish the audit report in Form-WW within (nine months) from the end of the year in duplicate.

(2) The notice for levy of penalty will be issued in Form-RR."

10. In the instant case, the petitioner is a dealer having a turn over exceeding Rs.1,00,00,000/- (Rupees One Crore). Therefore, as per Section 63-A of the Act, the petitioner will have to get his accounts audited by an Accountant and submit a report of such audit in the prescribed form, duly signed and verified by an Accountant to the Assessing Authority, within such period as may be prescribed. As per the TN VAT Rules, 2007, the audit report form is Form WW and as per Rule 16-A, the audit report in Form WW shall be filed by the dealer within a period of nine(09) months from the end of the year in duplicate.

11. In the instant case, the Assessment Year involved is 2015-16. For the Assessment Year 2015-16, the prescribed time limit till the end of the year to satisfy the requirements under Rule 16-A of the TN VAT Rules, 2007 is 31.12.2016. But, in the instant case, the

impugned Assessment order has been passed on 16.12.2016 itself, that too, on the same day on which the petitioner has submitted a reply to the pre-revision notice dated 14.11.2016. Therefore, it is evident that the respondent has not waited for the deadline for the production of the Audit report in accordance with Rule 16-A of the TN VAT Rules, 2007 which permits the petitioner to produce the audit report on or before 31.12.2016 for the Assessment Year 2015-16.

12. For the foregoing reasons, this Court is of the considered view that the respondent has violated the principles of natural justice by not affording personal hearing to the petitioner and has also passed the impugned assessment orders by total non application of mind by not adhering to the procedure contemplated under Section 63-A of the TN VAT Act 2006 r/w Rule 16-A of the TN VAT Rules, 2007.

13. In the result, the impugned assessment order dated 16.12.2016 passed by the respondent is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent, after giving adequate opportunity to the petitioner, including granting them the right of personal hearing and after considering Form WW to be submitted by the petitioner shall pass final orders within a period of eight (08) weeks from the date of receipt of a copy of this order. With the aforesaid directions, the **Writ Petition is disposed of**. No costs. Consequently, connected W.M.P.(MD).No.794 of 2017 is closed.

Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

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To

The Commercial Tax Officer,
Tirunelveli Town Assessment Circle,Tirunelveli.

+1 CC to M/s.SPL GP (SR-62136[F] dated 24/04/2019)
+1 CC to M/s.R.D.GANESAN, Advocate (SR-62351[F] dated 24/04/2019)

Order made in
W.P.(MD).No.933 of 2017

ES/06.05.2019/4P/4C