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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.19987 of 2016
and
W.M.P.(MD)No.14388 of 2016

Tvl.Hindustani Steels,
Represented by its Proprietor,
S.Manikandan, aged about 30 years,
S/o.R.Seetharaman,
No.405/4, Madurai Road,
Thirumangalam,
Madurai District 625 706. ... 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 Assistant Commissioner (CT),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
No.15/91, Sonalar Street, Jawahar Nagar,
Thirumangalam,
Madurai District 625 706. ... 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.33845044357/2014-15, dated 12.07.2016 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.M.Jeyakumar
Additional Government Pleader

ORDER

The instant Writ Petition has been filed challenging the impugned assessment order passed by the second respondent in TIN No.33845044357/2014-15, dated 12.07.2016.

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

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proposed to revise the assessment under Section 27 of the TNVAT Act, 2006, as per the pre-revision notice dated 14.10.2015. 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, without issuing any notice, the impugned assessment order has been passed. Challenging the same, the present Writ Petition has been filed.

3.Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mr.M.Jeyakumar, 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.Per contra, 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 based on the details and vouchers submitted by the petitioner to the respondents, tax was also reduced under the impugned assessment order. Hence, 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 are that the other end seller has not reported to the respondents the sales made to the petitioner. It is seen from the records 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***

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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:-

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> *"...To say the least, the show-cause notice issued by the assessing officer proposing to reverse the I.T.C. Availed 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. Availed 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 (Inifiniti 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.Further, the learned counsel for the petitioner drew the attention of the Hon'ble Division Bench Judgement of this Court in the case of **G.V.Cotton Mills (P) Limited Vs. The Assistant Commissioner (CT)** in **W.A.Nos.234 to 240 of 2015**, dated **16.03.2018**, where in it has been held that even if the assessee does not ask for a personal hearing, it is mandatory for the assessing officer to grant personal hearing to the dealer/assessee.

8.For the foregoing reasons, this Court is of the considered view that the respondents have violated the principles of natural justice.

9.In the result, the impugned assessment order passed by the second respondent in TIN No.33845044357/2014-15, dated 12.07.2016, 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.

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10.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 (Writs)

// 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 Assistant Commissioner (CT),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
No.15/91, Sonalar Street, Jawahar Nagar,
Thirumangalam,
Madurai District 625 706.

Copy to:
The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.(2C)

+1 CC to M/s.B.ROOBAN, Advocate (SR-52181[F] dated 07/03/2019)

+1 CC to SPL GP (SR-52600[F] dated 08/03/2019)

W.P.(MD)No.19987 of 2016
and
W.M.P.(MD)No.14388 of 2016
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CS: (06/06/2019) 4P 7C