BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.01.2019
CORAM:
THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN
W.P.(MD) No.20331 of 2016
and
W.M.P(MD) No.14530 of 2016

Tvl.South India Krishna Oil & Fats Pvt., Ltd.,
Represented by its Assistant Manager &
Authorised Signatory Vikas Rathor,
No.51, Keelapudur Main Road,
Tiruchy-620 001. ... Petitioner

vs.

The Assistant Commissioner (CT),
Palakarai-II Assessment Circle,
Tiruchy-1. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari, to call for the records on the file of the respondent in TIN.33473542564/2015-16 dated 15.09.2016 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.Chandrasekaran
for Mr.R.Senniappan

For Respondent : Mr.K.Mu.Muthu,
Additional Government Pleader .

O R D E R

The petitioner is an assessee registered with the respondent. For the assessment year 2014-15, the writ petitioner reported a total sales in Tamil Nadu as Rs.221,58,49,716. However, for the subsequent year namely 2015-2016, the total sales shown by the writ petitioner in Tamil Nadu was only Rs.111,76,52,764/-. After a comparative analysis of the sales turn over for these two years, the respondent came to the conclusion that there has been suspected sales suppression. Therefore, he issued a show cause notice dated 17.08.2016 calling upon the writ petitioner to file his objection along with documentary evidence giving valid reason for the lesser sales. The writ petitioner was also called upon to submit the list of declarations in Form F, issued for the Inward Stock Transfer made in the year 2014-15 and 2015-16 separately. The writ petitioner was also called upon to furnish a Provisional Trading Account for the year 2013-16 (Exclusive for the business in the State of Tamil Nadu). The writ petitioner offered his reply to the show cause notice on 24.08.2016 and submitted the same in person. Thereafter, the impugned order dated 15.09.2016 came to be passed making 50% equal time addition. This impugned order dated 15.09.2016 is under challenge in this writ petition.

2.Heard the learned counsel on either side.

3.The order impugned in this writ petition is liable to be set aside on the sole ground that opportunity of personal hearing was not offered as contemplated under Section 22(4) TNVAT Act. The respondent in the impugned order has stated that since the objection itself was handed over in person, there was no need to give personal hearing. Such an approach cannot be appreciated or accepted. Filing objection is one thing and affording personal hearing is another. When the statute specifically mandates that personal hearing should be granted, it is the duty of the respondent to grant such a hearing. In this case, admittedly such a hearing was not given. Therefore, the impugned order is vitiated and it is accordingly set aside.

4.But this Court will have to necessarily make one or two observations. Of course, it is open to the respondent to undertake a comparative statistical analysis of the sales turn over of the assessee and arrive at any tentative conclusion. But then merely because there is a lesser sales turn over during a given year, one cannot instantly come to the conclusion that there has been a sales suppression. Of course, the assessing officer can call upon the assessee to explain as to why there is a lesser sales comparing to the earlier year. But he cannot accuse the assessee of sales suppression. The reason for the downward turn in the business may be due to variety of reasons. In the present case, the writ petitioner has given a number of reasons as to why there has been a loss of sales in Tamil Nadu. For instance, the Government of Tamil Nadu started offering subsidized Palmolein pouches through fair price shop. That apart a number of new importers had arrived on the scene. Therefore, the writ petitioner's business had taken a direct hit.

5.The writ petitioner cannot be saddled with the negative burden. No one can prove the negative. If the authority has come across any instance of sales suppression, the same can be put against the writ petitioner and he can be confrontedly with the said material and called upon to explain. But merely because, the volume of sale has come down, the writ petitioner cannot be saddled with liability on that sole ground.

6.In the present case, the writ petitioner has suffered a double whammy. He already suffered loss in the volume of the business and he is now called upon to pay extra tax along with penalty.

7.The matter is remitted to file of the respondent to pass orders afresh in accordance with law after affording opportunity of personal hearing. The respondent will bear in mind the observation of this Court and pass a fresh order in accordance with law. This writ petition is allowed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To
The Assistant Commissioner (CT),
Palakarai-II Assement Circle,
Tiruchy-1.

+1cc to Mr.S.RAJA JEYACHANDRA PAUL, Advocate, SR.No. 41391
+1cc to M/s.Special Government Pleader,SR.No. 41649

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