BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2019

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THE HONOURABLE **MR.JUSTICE. ABDUL QUDDHOSE**

W.P(MD).No.21350 of 2016
and
W.M.P.(MD)No.15266 of 2016

M/s.VTM Limited,
Rep.by its Director,
K.Thiagarajan,
Sullakarai,
Virudhunagar District. : Petitioner

Vs.

The Assistant Commissioner,
(Commercial Taxes)
Commercial Taxes Building,
Aruppukottai. : Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, to call for the records of the respondent in No.33495800034/2014-15 and quash the order dated 14.10.2016 as it is in violation of the principles of natural justice and contrary to the judgment of this Court in W.A.Nos.1412 and 1413 of 2009 dated 14.10.2009.

For petitioner : Mr.R.D.Ganesan

For Respondent : Mr.D.Muruganantham, Additional Government Pleader

O R D E R

The instant Writ Petition has been filed challenging the provisional assessment order dated 14.10.2016 passed by the respondent in TIN No.33495800034/2014-15.

2.It is the case of the petitioner that the respondent has violated the principles of natural justice by passing the impugned provisional assessment order after the end of the assessment year. It is their case that for the assessment year 2014-15, the provisional assessment order can be passed only before the end of the assessment year i.e., on or before 31.03.2015. Further, it is their case that even though the petitioner had sought for refund of tax under Section 18 of the Tamil Nadu Value Added Tax Act 2006, under the impugned provisional assessment order, the respondent has also dealt with other subjects based on the returns submitted by the petitioner. In such circumstances, according to the petitioner, the respondent has violated the principles of natural justice.

3.The respondent has also filed his counter affidavit before this court. As seen from the counter, he has stated that sufficient opportunity was granted to the petitioner to raise all objections available to him under law, but he failed to make use of the said opportunity. Further, it is their case as seen from Paragraph No.5 of the counter affidavit that insofar as the refund on Zero Rate Sales, based on the scrutiny of Form-W filed by the dealer, order can be passed and accordingly during the subject assessment year the Input Tax Credit claimed by the petitioner on account of their export sales in Form-W for the month of July-2014 is not in accordance with the TNVAT Act and the TNVAT Rules made therein and accordingly, the Assessing Officer has passed the order in regard to their Refund claim in Form-W alone and so it is only in accordance with law.

4.It is also their case that the petitioner has failed to prove their case by filing sufficient material evidences in support of their contentions that the Yarn waste produced during the manufacture has been sold and the taxes paid on output. So, in the absence of documentary evidence, the proposal of Input Tax Credit reversal was confirmed by the respondent under the impugned assessment order. It is their case that they have not violated the principles of natural justice by passing the impugned assessment order.

5.Heard Mr.R.D.Ganesan, learned counsel appearing for the petitioner and Mr.D.Muruganantham, learned Additional Government Pleader appearing for the respondent.

6.The learned counsel for the petitioner drew the attention of this Court to the Division Bench judgment of this Court dated 14.10.2009 passed in W.A.Nos.1412 and 1413 of 2009, in the case of ***M/s.Jothi Melters (India) Private Ltd.,*** *Vs.* ***The Commercial Tax Officer, Sathiyamangalam,*** wherein he pointed out that the Division Bench held that it is not open to the Revenue to pass a provisional order of assessment after the end of the assessment year. According to him, in the instant case, the assessment pertains to the year 2014-15, but the impugned provisional order of assessment was passed by the respondent on 14.10.2016. Whereas, it ought to have been passed before 31 March 2015. Further, according to the learned counsel for the petitioner, the respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner to raise all objections available to him under law as they have passed the impugned assessment order on an application filed by the petitioner under Section 18 of the TNVAT

Act 2006, seeking refund of tax, whereas the impugned assessment order deals with other subjects including reversal of Input Tax credit on wastage and destruction of ITC on the sale of exempted goods etc., based on the returns filed by the petitioner.

8.It is also his case that the additional documents filed by the petitioner before the respondent were not acknowledged by the respondent and were not considered by the respondent under the impugned assessment order.

9.Per contra, the learned Additional Government Pleader for the respondent would submit that the impugned assessment order is not a provisional assessment order and therefore, the Division Bench judgment of this court relied upon by the learned counsel for the petitioner is not applicable to the facts of the instant case. Further, he would submit that as against the impugned assessment order, an alternate efficacious appellate remedy is available to the petitioner under the Tamil Nadu Value Added Tax Act, 2006. Without exercising the same, the petitioner has approached this Court under Article 226 of the Constitution of India, which is not maintainable.

Discussion:

10.As seen from the impugned assessment order, it is evident that the order has been passed on an application filed by the petitioner under Section 18 of the Tamil Nadu Value Added Tax Act 2006, seeking refund of tax on export sales. But as seen from the impugned assessment order, the subjects dealt with by the respondent includes the reversal of Input Tax Credit and the rejection of the claim of refund. It is also the case of the petitioner that additional documents are filed before the respondent, but they were neither acknowledged by the respondent nor were they considered by the respondent under the impugned assessment order. Even though the petitioner had specifically represented that they are direct exporters of Cotton Cloth and the sales are duly covered under sub-Section (1) of Section 5 of the CST Act and hence, refund of tax paid on purchases of cotton Yarn effected within the state claimed as per Form W is in order on compliance of the procedures enumerated as per Rule 11(2) of the Tamil Nadu Value Added Tax Rules, the said contention of the petitioner has not been considered by the respondent under the impugned assessment order.

11.For the foregoing reasons, this Court is of the considered view that the respondent has violated the principles of natural justice by not affording sufficient opportunity to the petitioner to place all objections available to him under law. Further, in the light of the Division Bench judgment of this Court dated 14.10.2009, passed in W.A.Nos.1412 and 1413 of 2009 referred to supra, since the provisional assessment order has been passed after the end of the assessment year, the said assessment order has to be quashed by this Court.

12.In the result, the impugned assessment order dated 14.10.2016 passed by the respondent in TIN No.33495800034/2014-15 is hereby quashed and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to issue fresh show cause notice to the petitioner in accordance with the provisions of the TNVAT Act, 2006, within a period of two [2] weeks, from the date of receipt of a copy of this order. The petitioner is directed to submit his objections, within a period of two [2] weeks from the date of receipt of the fresh notice. Thereafter, the respondent is directed to pass final orders after affording sufficient opportunity to the petitioner to raise all objections available to them under law including granting the right of personal hearing within a period of eight [8] weeks.

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

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner,
(Commercial Taxes)
Commercial Taxes Building,
Aruppukottai.

+1cc to Mr.R.D.Ganesan, Advocate, SR.No. 53701

W.P(MD).No.21350 of 2016

DAS
KK/SAR/29.04.2019/ 4P- 3C