BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 27.02.2019
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)No.22070 of 2016
and
W.M.P(MD)No. 15780 of 2016

Tvl.Srinivasan and Co.,
represented by K.Panjavarnam, Legal heir,
W/o.Late K.Kuppusamy (Partner). ... Petitioner

Vs

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer (CT)-II,
Palani-II Assessment Circle,
Commercial Taxes Office,
No.12, 1st Cross Street,
R.S.Ramalingam Street, Shanmugapuram,
Palani, Dindigul District-624 601. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33675361592/2011-12 dated 30.09.2015 and quash the same and to consequently direct the second respondent to revise the annual returns from the petitioner and to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.A.Thiyagarajan,
Government Advocate

ORDER

The instant writ petition has been filed challenging the assessment order dated 30.09.2015 passed by the second respondent in TIN 33675361592/2011-12.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006. It their case that they are exempted from payment of tax under the Tamil Nadu Value Added Tax, 2006, since they are carrying on the business of blasting of explosives, which is totally exempted from tax as per the notifications dated 05.03.2004 and 26.09.2006 issued by the Commissioner of Commercial Taxes. According to the petitioner, since his business has been exempted from payment of tax, they did not file any annual returns before the second respondent. It is also their case that the managing partner, who is the husband of the deponent to the affidavit in this writ petition, was seriously ill and he was not incharge of the day to day affairs of the partnership business and was not in a position to respond to the notice received from the second respondent. According to the petitioner, without affording sufficient opportunity to the petitioner, the second respondent passed the impugned assessment order violating the principles of natural justice. In such circumstances, the instant writ petition has been filed.

3.Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate appearing for the respondents.

4.The learned counsel appearing for the petitioner drew the attention of this Court to the notifications dated 05.03.2004 and 26.09.2006 issued by the Commissioner of Commercial Taxes, Government of Tamil Nadu, Chennai and submitted that the petitioner has exempted sale of explosives in the course of execution of the composite contract of drilling holes, charging explosives and exploding rocks in wells and quarry from tax. According to the learned counsel for the petitioner, even though the exemption was granted when TNGST Act, 1959 was in force, the said exemption is also applicable to the TNVAT Act, 2006, in view of Section 88(3)(i) of TNVAT Act, 2006, which makes it clear that all the rules, regulations, notifications, clarifications or orders made or issued under any of the provision of the TNGST Act, 1959, shall continue to be in force unless and until they are not inconsistent with the provisions of the TNVAT Act, 2006.

5.The learned counsel for the petitioner further submitted that since the notifications issued by the Commercial Taxes Department on 05.03.2004 and 26.09.2006 are not inconsistent with the provision of the TNVAT Act, 2006, it is their case that the said notifications are binding on the respondents. According to the learned counsel for the petitioner, since sufficient opportunity was not given to the petitioner by the second respondent, all these factors were not considered by the second respondent in the impugned assessment order. The learned counsel appearing for the petitioner also drew the attention of this Court to the Hon'ble Division Bench of this Court in the case of ***G.V.Cotton Mills (P) Ltd., Vs.The Assistant Commissioner*** in W.A.(MD) Nos.234 to 240 of 2015, wherein the Hon'ble Division Bench has held that even if the objections were not given to the pre-assessment notice, the assessing officer should not deny the opportunity of personal hearing to the assessee.

6.Per contra, the learned Government Advocate appearing for the respondents would submit that even in the show cause notice dated 14.08.2015, the second respondent has given opportunity to the petitioner to raise objections and also had given the petitioner an opportunity of being heard in person. According to the learned Government Advocate, the petitioner failed to make use all those opportunities and instead has filed the instant writ petition without exercising the alternate appellate remedy available to him under the TNVAT Act, 2006.

7.In the instant case, it is the case of the petitioner that they are exempted from payment of tax under the TNVAT Act, in view of the notifications dated 05.03.2004 and 26.09.2006 referred to supra issued by the Principal Commissioner of Commercial Taxes. It is also their case that even if the said notifications were issued under the TNGST Act, 1959, the same is also applicable to the TNVAT Act, 2006 in view of Section 88 3(i) of TNVAT Act, 2006. Admittedly in the instant case, the petitioner has not sent any objections to the show cause notice sent by the second respondent . It is their case that in view of the exemption, they are not liable to pay taxes. Further it is the case of the petitioner that the managing partner of the petitioner namely, the husband of the deponent to the affidavit filed in support of this writ petition was seriously ill during the time, when the show cause notice was sent by the second respondent and therefore, it is their case that objections could not be submitted to the second respondent only for the said reason. Even though the second respondent in their show cause notice has offered the petitioner the right of personal hearing, they have not issued separate notices fixing the date of personal hearing.

8.The Hon'ble Division Bench judgment of this Court cited by the learned counsel appearing for the petitioner is squarely applicable to the facts of the instant case. Further the objections raised by the petitioner in this writ petition that they are exempted from payment of tax is a vital issue which has to be gone into by the second respondent before passing the final orders. The Hon'ble Division Bench of this Court has also held that even if objections are not submitted, the assessee should not be denied the opportunity of personal hearing. In the instant case, no such opportunity was granted to the petitioner. Therefore, this Court is of the considered view that the respondents have violated the principles of natural justice by not affording sufficient opportunity to the petitioner to submit his objection and also denied the opportunity of personal hearing to the petitioner.

9.Accordingly, the assessment impugned order dated 30.09.2015 passed by the second respondent in TIN 33675361592/2011-12 is hereby quashed and the matter is remanded back to the second respondent for fresh consideration in accordance with law and the second respondent shall give sufficient opportunity to the petitioner to place all his objections available to him under law and also grant him the right of personal hearing and the second respondent shall dispose of the proceedings within a period of eight weeks from the date of receipt of a copy of this order.

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

Sd/-
Assistant Registrar (CS-I)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer (CT)-II,
Palani-II Assessment Circle,
Commercial Taxes Office,
No.12, 1st Cross Street,
R.S.Ramalingam Street, Shanmugapuram,
Palani, Dindigul District-624 601.

+1cc to Mr.B.ROOBAN, Advocate, SR.No. 50353

W.P.(MD)No.22070 of 2016
and
W.M.P(MD)No. 15780 of 2016
27.02.2019

CP
KK/SAR/08.04.2019/ 4P- 4C