BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.[MD]No.23507 of 2016

and

W.M.P.[MD]No.16876 of 2016

M/s. Mala Traders,
Rep. by its Proprietor Mr.C.Subramanian,
3/1403-1 Telugu Street,
Melachatram Darasuram,
Kumbakonam. : Petitioner

Vs.

The Commercial Tax Officer (CT), (FAC),
Kumbakonam II Assessment Circle,
Kumbakonam. : Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in TIN No.33363982568/2013-14, quash the impugned proceedings dated 31.10.2016 and further direct the respondent to furnish the details requested by the petitioner in the objection letter dated 07.11.2014 and to grant an reasonable opportunity including an opportunity of being heard and cross examination of M/s.Jay Jay Agency, Pollachi having TIN No.33332242841/ and thereafter to pass order afresh in all perspective on its merits in terms of the decision of this Court reported in 142 STC 130.

For Petitioner : Mr.R.D.Ganesan
For Respondent : Mr.A.Thiyagarajan
Government Advocate

O R D E R

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The instant Writ Petition has been filed challenging the order dated 31.10.2016, passed by the respondent on the ground of violation of principles of natural justice.

2.It is the case of the petitioner that he is a registered dealer under the Tamil Nadu, Value Added Tax, Act, 2006 [hereinafter referred to as 'TNVAT Act']. According to the petitioner, he is a small time manufacturer of pillows and his total taxable turn over for the year 2013 - 2014 was only Rs.4,00,276/- under Section 22(2) of the TNVAT Act. According to the petitioner, he has been filing his annual returns in Form - I-1 reporting the purchase and sales turn over effected during the year

2013 - 2014 on 23.06.2014 and the respondent accepted the annual returns.

3.According to the petitioner, the revision of assessment was proposed by the respondent under Section 27(1) of the Act by notice dated 30.09.2016, based on the representation of the enforcement wing officers dated 24.08.2016, without verifying the books and records and the objections dated 07.11.2014, raised by the petitioner.

4.It is the case of the petitioner that they have categorically stated in their reply dated 07.11.2014, that they have not sold any items to M/s. Jay Jay Agency, Pollachi, having TIN No.33332245841 and in the same reply, they had also requested the respondent to furnish copies of the sale invoices along with the mode of payment made by the alleged purchaser M/s. Jay Jay Agency, Pollachi. According to the petitioner, they had effected only one purchase from the said M/s. Jay Jay Agency, vide a bill No.129 dated 14.11.2011 for Rs.16,407/- during the particular period, but, they have not sold any items to M/s. Jay Jay Agency, Pollachi.

5.It is the case of the petitioner that the details of the alleged sale to M/s. Jay Jay Agency, namely, the invoices, payment details and other documents sought for by the petitioner, were not provided by the respondent despite the request made by them. According to the petitioner, he was also not given opportunity to cross examine the representatives of the alleged purchaser M/s. Jay Jay agency by the respondent, which he is entitled to, as per Section 81 of the TNVAT Act. In such circumstances, the instant Writ Petition has been filed.

6.The respondent has also filed his counter affidavit, wherein they have stated that the petitioner has committed suppression of sales to the tune of Rs.96,28,504/- and the respondent has determined the total taxable turn over of the petitioner for the assessment year 2013 - 2014 at Rs.1,00,28,780/-, under Section 27 of TNVAT Act. According to the respondents, the petitioner has also not replied to the notice dated 30.09.2016 issued under Section 27 of the Act and only after giving sufficient opportunity to the petitioner, the impugned assessment order has been passed against the petitioner.

7.Heard Mr.R.D.Ganesan, learned Counsel for the petitioner and Mr.A.Thiyagarajan, learned Government Advocate for the respondent.

8.In the case on hand, the impugned assessment order has been passed under Section 27 of the TNVAT Act, 2006, on the ground that the petitioner has suppressed the sales to the tune of Rs.96,28,504/- for the assessment year 2013 - 2014. According to the respondent, the petitioner had sold goods to M/s. Jay Jay

Agencies, Pollachi, having TIN No.33332242841 which was suppressed in their returns submitted to the respondent.

9.The petitioner had specifically sent a reply dated 07.11.2014, requesting the respondent to furnish details of the alleged sales in favour of M/s. Jay Jay Agency, Pollachi, by furnishing them copies of invoices, payment details etc., and in addition to that they have made a specific request for cross examining the representatives of the alleged M/s.Jay Jay Agency, Pollachi. Eventhough, a request was made to the petitioner, the respondent has passed the impugned assessment order under Section 27 of the TNVAT Act, without affording an opportunity to the petitioner to cross examine the alleged purchasers M/s.Jay Jay Agency, Pollachi and without furnishing copies of the invoices, payment details and other documents available with the respondent pertaining to the alleged sales.

10.It is not in dispute that the petitioner's total taxable turn over prior to the impugned assessment order for the previous years was much below than what was assessed under the impugned assessment order. It is also the case of the petitioner that he is a small time manufacturer of pillows whereas under the assessment order passed under Section 27 of the TNVAT Act, the total taxable turn over of the petitioner for the assessment year 2013 - 2014, has been assessed at Rs.1,00,28,780/-.

11.In the considered view of this Court, the respondent ought to have considered all the above mentioned factors and should have given sufficient opportunity to the petitioner to place all his objections and also should have given an opportunity to the petitioner to cross examine the alleged purchasers M/s.Jay Jay Agency, Pollachi. But, in the instant case, no such opportunity was given to the petitioner and therefore, the respondent has violated the principles of natural justice. It is settled law that the assessee should be given sufficient opportunity to raise all objections available to them under the TNVAT Act, 2006. But, in the instant case, the petitioner has not been given sufficient opportunity to raise all objections available to him and the respondent has also denied the petitioner the opportunity to cross examine the authorised representatives of M/s.Jay Jay Agency, Pollachi, the alleged purchaser, which will prove their claim that they have not sold any goods to M/s.Jay Jay Agency.

12.In the result, for the aforesaid reason, the impugned order dated 31.10.2016 passed by the respondent against the petitioner in TIN No.33363982568/2013-14, is hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders after affording sufficient opportunity to the petitioner, including permitting him to cross examine the authorised representatives of M/s.Jay Jay Agency, Pollachi and the respondent shall pass final orders on merits in accordance with law within a period of eight [8] weeks from the date of receipt of a copy of this order.

13.With the aforesaid direction, the Writ Petition is disposed of. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL SIDE)

// True Copy //

Sub Assistant Registrar(CS)

MR

To
The Commercial Tax Officer (CT), (FAC),
Kumbakonam II Assessment Circle,
Kumbakonam.

+1CC TO MR.R.D.GANESAN, Advocate Sr. No. 49727
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 50141

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TR (10.04.2019) 4P 4C