BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD) No.20977 of 2019

C.Marimuthu ... Petitioner

vs.

1.The Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-05.

2.The Commercial Tax Officer,
Lalgudi Assessment Circle,
Commercial Taxes Office,
No.32, 7th Cross, Paramasivapuram,
Lalgudi,
Tiruchirapalli District. ... Respondents

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of certiorari, calling for records pertaining to the impugned proceedings of the 2nd Respondent in TIN/33953483809/2014-15 dated 27-02-2017 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

The petitioner is running a proprietorship business at Theranipalayam, Lalgudi Taluk, dealing with manufacturing and selling of boulders. He is a registered dealer and accordingly, he has filed returns under Tamil Nadu Value Added Tax Act regularly. He has closed down his business and surrendered his registration during the year 2016. For the assessment year 2014-15, assessment deemed to be completed on 31.10.2015, accepting the returns filed by the petitioner. After the surprise inspection in his premises on 22.08.2016 by the Enforcement Officials, he was forced to pay a sum of Rs.2,00,000/- towards tax due. Thereafter, the second respondent issued a notice dated 20.01.2017 under Section 22(4) of the TNVAT Act for the tax due of Rs.2,16,704/-. Pursuant to that, the petitioner personally appeared before the second respondent and explained that he has promptly reported all his sales till date.

However, according to the petitioner, without considering the same, the authority passed final orders on 27.02.2017 without affording an opportunity of personal hearing. Challenging the same, the petitioner is before this Court.

2. Section 22(4) of the TNVAT Act reads as follows:

> "22(4) If no return is submitted by the dealer for any period of the year or if the return filed is in complete or incorrect, or if not accompanied with any of the documents prescribed or proof of payments of tax, the assessing authority, shall, after making such enquiries as it may consider necessary, assess the dealer to the best of its judgment, subject to such conditions as may be prescribed, after the completion of that year:
>
> Provided that before taking action under this sub-section, the dealer shall be given a reasonable opportunity of being heard."

3.Heard both sides and perused the records.

4.It is well-settled that the personal hearing is mandatory, before passing final orders. In the instant case, the authority has failed to comply with the principles of natural justice by providing personal hearing. Therefore, the impugned order is liable to be set aside.

5.However, the learned counsel for the petitioner would submit that he is prepared to file an appeal against the order.

6.Considering the above submission, the petitioner is permitted to file an appeal before the competent authority. Since there is a delay of 2 years, a direction is given to the petitioner to deposit 40% of the tax due before the appellate authority, as a precondition for entertaining the appeal, within a period of three weeks from the date of receipt of a copy of this order and if the deposit is not made, it is open to the respondents to proceed further in accordance with law.

7.Accordingly, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// 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-05.

2.The Commercial Tax Officer,
Lalgudi Assessment Circle,
Commercial Taxes Office,
No.32, 7th Cross, Paramasivapuram,
Lalgudi,
Tiruchirapalli District.

+1 CC to Mr.B.ROOBAN, Advocate (SR-90352[F] dated 30/09/2019)

+1 CC to SPL GP (SR-90871[F] dated 01/10/2019)

W.P.(MD) No.20977 of 2019
30.09.2019

vs
VB(21.10.2019) 3P 5C