BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 14.11.2019
CORAM
THE HONOURABLE **MR.JUSTICE M.GOVINDARAJ**
W.P.(MD) No.22891 of 2019
and
W.M.P.(MD)No.19643 of 2019

New Anna Sweets,
Represented by its' Proprietor,
S.Jahir Hussain,
No.255A, Avvai Shanmugham Salai
Nagercoil 629 001.
Kanyakumari District. ... Petitioner

Vs.

The Deputy State Tax Officer,
Nagercoil-2. Mead Street,
Nagercoil-629 001. ... 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 on the file of the respondent herein in TIN 33316100736/2014-15, dated 18.09.2019 and quash the same and consequently direct the respondent to grant the opportunities required by the petitioner in the representation dated 09.09.2019 and then pass orders according to law after granting to the petitioner an opportunity of being heard.

For Petitioner : Mr.M.Azeem
For Respondent : Mr.M.Rajarajan,
Government Advocate.

ORDER

This Writ Petition has been filed to quash the assessment order passed in TIN 33316100736/2014-15, dated 18.09.2019.

2.The petitioner is running sweet stall and reported total taxable turnover Rs.9,25,971/- for the assessment year 2014-15. The Assessing Authority, on 24.01.2016, imposed a tax of Rs.2,66,675/- and levied penalty Rs.2,91,019/-. Against which, the petitioner preferred an appeal to the Appellate Deputy Commissioner (CT), Tirunelveli. The Appellate Deputy Commissioner set aside the same, on 25.05.2017 and it was remanded back with a direction to the Assessing Authority to conduct a detailed enquiry in respect of purchase omissions noticed by him with other end dealers in consultation of the respective Assessing Officers of the other end dealers, and a further direction to afford an opportunity of personal hearing to the petitioner to prove his case.

3.After the matter was remanded back a pre-revision notice was issued on 28.02.2018. The petitioner submitted a representation seeking details of the selling dealers, invoice number and date, C.form, rate of tax and total amount, etc. In response to the same, the respondent supplied a web report and called him for personal hearing, on 26.08.2019. The petitioner by its letter, dated 09.09.2019, sent a reply seeking time, details and also his objection with regard to the proposal made by the respondents. He also asked for the name and full address of the selling dealers and that apart to produce the relevant accounts and to issue summons to the other end dealers for their appearance for cross examination. However, the impugned assessment order came to be passed on 18.09.2019.

4.It is observed by the Assessing Officer that summons were sent to the petitioner and the dealers and the petitioner has failed to avail the opportunities given to him, on four occasions, before passing assessment order. however, there is no answer to the procedures followed. In fact the Assessing Authority did not follow the direction given by the Appellate Authority to conduct detailed enquiry in respect of purchase omission noticed by him with other end dealers in consultation of the respective Assessing Officers of the other end dealers.

5.The petitioner, in its representation dated 09.09.2019, has specifically asked for opportunity of cross examination of other end dealers. That opportunity was not granted. This Court, in the case of ***State of Tamil Nadu Vs. A.N.S.Guptha and Sons*** reported in ***(2011) 38 VST 45*** has categorically held that the denial of the opportunity of cross-examination demanded by the dealer, vitiated the order of assessment. The relevant portion of the judgment is extracted hereunder:-

> "*Held, dismissing the petition, (i) that an opportunity should have been given to the dealer and the refusal by the Department to give an opportunity of such cross-examination demanded by the dealer, vitiated the order of assessment. When the dealer had clearly produced the sale bills, which it was expected to maintain under law, merely because in the sale bills the name of the purchasers had not been mentioned, the Department could not treat the transaction as a bogus one and disallow the exemption granted under law. When finding of facts had categorically been recorded by both the appellate authorities in favour of the dealer there was no reason to interfere with the order of Tribunal.*

The questions of law sought to be raised by the Department were purely questions of fact

(ii) That the assessing officer could not simply take into consideration the report of the enforcement wing and should have decided the matter on the merits, independently unbiased and uninfluenced by any other subsequent factors. The assessing officer had basically committed a mistake in stating that he could not conduct a court of law. Such an attitude of the assessing authority in totally rejecting the contentions of the dealer without applying the basic principles of law, was not legal and valid in law."

6.In view of the judgment of the Division Bench of this Court and also non-compliance of the direction issued by the Appellate Deputy Commissioner (CT), in respect of assessment order of the petitioner for the year 2014-15, the impugned order is set aside and the matter is remitted back to the Assessing Authority to comply with all the directions issued by the Appellate Authority and to pass fresh orders, after affording opportunity of personal hearing to the petitioner, within a period of four weeks from the date of receipt of a copy of this order.

7.This Writ Petition is disposed of, with the above directions. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

The Deputy State Tax Officer,
Nagercoil-2. Mead Street,
Nagercoil-629 001.

+1 CC to M/s.M.AZEEM, Advocate (SR-98580[F] dated 15/11/2019)

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