BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.15511 of 2016
and
W.M.P.(MD)No.11406 of 2016

Tvl.Varthini Store,
Represented by its Proprietor,
M.Gopalakrishnan, aged about 47 years,
S/o S.Mani,
No.2, South Mada Street,
Thirunelveli Town,
Thirunelveli-627 006. ... 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 Deputy Commercial Tax Officer,
Thirunelveli Town Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District-627 002. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of writ of Ceritorari to call for the records pertaining to the impugned proceedings of the second respondent in T/N No.33845581155/2013-14 dated 09.12.2015 and quash the same.

For Petitioner : Mr.R.Veeramanikandan
For Respondents : Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents. The challenge in this writ petition is to an order of assessment dated 09.12.2015 passed by the second respondent / Assessing Officer in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006, (in short 'Act') for the period 2013-14.

2. Clearly, an opportunity of personal hearing has been denied to the petitioner in this case leading to a violation of the principles of natural justice.

3. An assessment was originally made in terms of Section 22 (2) of the Act on 21.01.2015. Thereafter, a notice dated 31.07.2015 proposing revision of the assessment was issued granting the petitioner ten days to file objections to the proposals contained therein. A reply was filed by the petitioner on 19.08.2015.

4. This was followed by a second notice dated 19.08.2015 again calling upon the petitioner to file objections to the pre-assessment notice, granting a further ten days time for the same. The Assessing Authority observes therein that the petitioner has only sought time on the earlier occasion and has not made any statement on merits and also states that final orders will be passed, if no objections were received on merits. Vide reply, dated 31.08.2015, the petitioner raises some objections on merits requesting, specifically in conclusion an opportunity of personal hearing to explain its submissions in an effective manner with the assistance of its tax consultant.

5.On 22.09.2015, the Assessing Authority issues notice for personal hearing fixed on 30.09.2015 at 11.30 a.m.. On the date of personal hearing, the petitioner brings it to the notice of the Assessing Officer that the tax consultant was unwell and not in a position to appear on that date. Thirty days time was sought to appear and furnish details. Discretion is available with the Assessing Officer to accept or reject the same request. However, such discretion has to be seen to have been exercised.

6. In the present case, even without rejecting the request of the petitioner and putting the petitioner on notice that the request for adjournment has been rejected, the Assessing Authority proceeds to pass the impugned order rejecting *inter alia* the request for adjournment. I am thus of the opinion that no effective opportunity for personal hearing has been afforded insofar as the petitioner was not put to notice of the fact that the Assessing Officer intends to reject its requests for an adjournment.

7. Learned Special Government Pleader points out to several damaging averments in the order of assessment, alleging that the petitioner has defaulted even in statutory compliances such as filing of monthly returns. That may be so. However, this Court is of the considered view that such allegations should be put to the petitioner and an effective opportunity should be afforded enabling the petitioner to address and rebut the same. This has not been done in this case.

8. In the light of the aforesaid observations, the impugned order of assessment is set aside and the Assessing Officer is

directed to afford one final opportunity to the petitioner to make its submissions prior to completion of proceedings for assessment. The petitioner will appear before the Assessing Officer on 13.08.2019 at 10.30 a.m., and no further notice need be issued to the petitioner in this regard. After hearing the petitioner and considering all / any materials that may be filed by it in support of its contentions, an order of assessment be passed *denovo* by the Assessing Officer on merits and in accordance with law. If the petitioner does not appear on the aforesaid date, the Assessing Authority is at liberty to proceed with the assessment ex-parte based on the materials available on record. This Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

To

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

2.The Deputy Commercial Tax Officer,
Thirunelveli Town Assessment Circle,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelveli District-627 002.

+1 CC to M/s.B.ROOBAN, Advocate (SR-77187[F] dated 24/07/2019)

+1 CC to M/s.SPL GP (SR-77738[F] dated 25/07/2019)

W.P(MD)No.15511 of 2016
24.07.2019

TA
JM/09.08.2019/3P-5C