BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2019

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THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).No.6622 of 2016
and WMP(MD)No.5732 of 2016

Tvl.Raju Spinning Mills (P) Ltd.,
Rep. By its Director,
P.D.Subramania Raja ...Petitioner

Vs.

The Assistant Commissioner (CT),
Rajapalayam-II Assessment Circle,
Rajapalayam ... Respondent

Prayer :Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for records on the file of the respondent herein in TIN.33656060003/2012-2013 dated 16.10.2015 and quash the same as illegal, invalid and violative of the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.S.Angappan
Government Advocate

O R D E R

The main ground agitated by the petitioner before me is the non-provision of opportunity of personal hearing to the petitioner prior to finalization of an order of assessment dated 16.10.2015 passed in terms of the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the period 2012-2013.

2. A pre-assessment notice was issued by the Assessing Officer on 10.08.2015.The issue raised relates to an alleged difference arising from verification of Form-WW and reported turnover which difference was proposed to be brought to tax as unreported turnover. Interestingly, the Assessing Authority has also raised a proposed modification of assessment in terms of the provisions of the Central Sales Tax Act, 1959, (in short 'Act') in the same notice. In summary, the assessing authority proposed to reject the assessment already completed under the Central Sales Act for 2012-2013 and to add the purchase difference along with 10% Gross Profit as suppressed turnover in the VAT assessment.

3. A reply was filed by the petitioner on 01.09.2015 wherein, the difference alleged was sought to be explained along with statements and a reconciliation report. According to the

petitioner, the difference occurs only on account of grouping of accounts in the audited annual report in the statutory Form prescribed under the Companies Act, 2013. The reply also addressed the proposal relating to Central Sales Tax enclosing 'C' Forms for the consideration of the authority.

4. The impugned assessment order dated 16.10.2015 has been passed rejecting the explanation offered by the assessee. At the threshold, I may state that the order is cursory and entirely non-speaking. It is likely that the Assessing Officer was not able to comprehend or appreciate the reconciliation put forth by the assessee. But then it is for that reason that a personal hearing is provided for, prior to completion of assessment. In this case, that has not been done.

5. The consistent view taken by this Court as well as the Guidelines issued by the Principal Commissioner and Commissioner of Commercial Taxes reiterate the position that an opportunity for personal hearing will be included within the scope of principles of natural justice.

6. In the light of the above, the impugned order is set aside. The petitioner will appear before the respondent on Thursday i.e on 08.08.2019 at 10.30 a.m. No further hearing notice need be issued in this regard. After hearing the petitioner and considering the documents placed by the petitioner in support of its contentions, an order of assessment shall be passed by the Officer *de novo* and in accordance with law, within a period of four weeks from date of conclusion of personal hearing.

7. This writ petition is allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

CM
To
The Assistant Commissioner (CT),
Rajapalayam-II Assessment Circle, Rajapalayam

+1CC TO MR.A.CHANDRASEKARAN, Advocate Sr. No. 77571

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