BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 11.12.2020
CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.2603 and 2604 of 2020
and W.M.P.(MD).Nos.2248 & 2249 of 2020

M/s.Sangeetha Match Works,
represented by its Partner G.S.Karthikeyan,
261/A, Sengamalanatchiapuram Road,
Thithuthangal, Sivakasi. .. Petitioner in both petitions

Vs.

The State Tax Officer (Inspection Cell),
Virudhunagar,
Tirunelveli Division,
Commercial Tax Buildings,
Virudhunagar. .. Respondent in both petitions

COMMON PRAYER: Writ Petitions are filed under Article 226 of Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in GSTIN No.33AAGFT3920N1Z0/2017-2018 and GSTIN No.33AAGFT3920N1Z0/2018-2019 dated 19.11.2019 issued by the respondent and quash the same is wholly without jurisdiction and clear violation of principles of natural justice and consequently direct the respondent to pass an assessment order afresh after conducting an enquiry as contemplated under Section 73 of Tamil Nadu Goods and Services Tax Act 2017.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
(in both Wps.)

COMMON ORDER

(This writ petition is heard through video conference)

These writ petitions have been filed challenging the impugned assessment orders dated 19.11.2019 passed under the Tamil Nadu Goods and Services Tax Act, 2017, for the assessment years 2017-2018 and 2018-2019.

2.Since the issue involved in both the writ petitions are one and the same, they are disposed of by a common order.

3.Heard Mr.S.Karunakar, learned counsel for the petitioner and Mrs.J.Padmavathi Devil, learned Special Government Pleader for the respondent.

4.The case of the petitioner is that a show cause notice was issued by the respondent for the assessment years 2017-2018 and 2018-2019 on 11.10.2019, wherein, it was pointed out that in respect of the assessment year 2017-2018, there were 33 defects in the monthly returns submitted by the petitioner and in so far as the assessment year 2018-2019 is concerned, there were 38 defects in the monthly returns submitted by the petitioner. According to the petitioner, on receipt of the show cause notice dated 11.10.2019, they sent a reply on 26.10.2019 to the respondent requesting for further time to reply to the show cause notice on the ground that they need to consult their Auditor. They sought for 15 days time in their representation dated 26.10.2019. It is the case of the petitioner that the said representation dated 26.10.2019 was also duly received by the respondent. Thereafter, on 05.11.2019, the respondent sent a communication to the petitioner stating that they will not be in a position to grant 15 days time as sought for in the petitioner's representation dated 26.10.2019 and they intimated the petitioner to appear before the respondent. Once again on 11.11.2019, the petitioner sent another representation to the respondent seeking for further time of 30 days to send reply to the show cause notice dated 11.10.2019. It is the case of the petitioner that arbitrarily and by violating the principles of natural justice, the impugned assessment orders dated 19.11.2019 for the assessment years 2017-2018 and 2018-2019, have been passed by the respondents.

5.It is the case of the petitioner, that even though the representations given by the petitioner are reflected in the impugned assessment orders, the reason for rejection of the same has not been disclosed in the impugned assessment orders. It is also the contention of the petitioner that since several defects were pointed out by the respondents in their show cause notice dated 11.10.2019, the petitioner had sought time to send a reply. It is the case of the petitioner that sufficient opportunity was not granted by the respondent to the petitioner before passing of the impugned assessment orders. According to the petitioner, the show cause notice has been issued, pursuant to the spot inspection made by the respondent officials at the petitioner's place of business and the impugned assessment orders have been passed mechanically, based on the report submitted by the Enforcement Wing Officials of the respondent.

6.In the counter affidavit filed by the respondent, they have stated that personal hearing was afforded to the petitioner in the impugned assessment proceedings, but they did not avail the same. It is also their case that they have followed the procedure contemplated under the Tamil Nadu Goods and Services Tax, Act, 2017 as well as its Rules before passing of the impugned assessment orders. According to them, since no valid reason has been given by the petitioner for extension of time to send his reply to the show cause notice issued by the respondent, the same was rejected by the respondent. It is their case that principles of natural justice has not been violated by them while passing the impugned assessment orders. According to them, the only remedy available to the petitioner is to file the statutory appeal under Tamil Nadu Goods and Services Tax Act, 2017, if aggrieved by the impugned assessment orders and therefore, according to them the present writ petitions are not maintainable.

7.The learned counsel for the petitioner drew the attention of this Court to Section 75(5) of the Central Goods and Services Tax Act, 2017, which is in *pari materia* with Tamil Nadu Goods and Service Tax Act, 2017 and would submit that once sufficient cause is shown by the person chargeable with tax, the officer will have to necessarily grant time to the said person to give his reply to the show cause notice. Further, he would contend that as per the proviso to Section 75(5) of the Central Goods and Service Tax Act, 2017, the Officer is entitled to grant maximum three adjournments. However, according to him, in the instant case, even a single adjournment was not granted by the respondent. He would also submit that the ultimate aim of proper adjudication is to provide sufficient reasonable opportunity to the delinquent to prove his genuineness with regard to the records. According to the learned counsel for the petitioner, the respondent has passed the impugned order in a hasty manner by total non application of mind.

8.After drawing attention to the assessment order, the learned counsel for the petitioner would submit that even though the representations of the petitioner seeking for further time to send reply to the show cause notice is reflected in the impugned assessment order, no reasons have been given by the respondent in the impugned assessment order as to why the same was been rejected. The learned counsel for the petitioner also drew the attention of this court to a single Bench Judgment of this Court, dated 26.10.2013, passed in *W.P.(MD).No.2194 to 2199 of 2013* in the case of *Tvl.Steel Mart Private limited Vs. The Commercial Tax Officer* and after referring to para Nos.2 and 3 of the said judgment would submit that in similar set of facts, the learned single judge has held that without passing orders on the request by an assessee seeking further time to send a reply, assessment orders ought not to have been passed without giving an opportunity of hearing to the petitioner.

9.Per contra, the learned Special Government Pleader on behalf of the respondents would submit that sufficient opportunity was granted to the petitioner in the impugned assessment proceedings and only thereafter, the impugned assessment orders were passed. Further she would contend that the petitioner failed to avail the personal hearing opportunity in the impugned assessment proceedings, despite the fact that personal hearing notice was issued to the petitioner by the respondent.

10.Further, she would contend that the show cause notice was issued on 11.10.2019 and the impugned assessment order was passed only on 19.11.2019 and sufficient time was granted to the petitioner to send his reply. But however, according to her, the same was not availed by them. According to her, the principles of natural justice has not been violated and hence, the only remedy available to the petitioner is to file the statutory appeal contemplated under the Tamil Nadu Goods and Services Tax Act, 2017.

11.It is not in dispute that the spot inspection in the petitioner's place of business was carried on for 22 days between 22.08.2019 to 20.09.2019. The show cause notice was issued on 11.10.2019 by the respondent to the petitioner indicating 33 defects for the assessment year 2017-18 and 38 defects for the assessment year 2018-19. The petitioner by his representations dated 26.10.2019 and 11.11.2019, had sought for further time to send reply to the show cause notice on the ground that they have to consult their Auditor before sending their reply. Considering the fact that the spot Inspection was carried out by the respondent for 22 days and the respondent has also pointed out 33 defects in the assessment year 2017-18 and 38 defects in the assessment year 2018-19, sufficient opportunity ought to have been given to the petitioner to send a reply to the show cause notice dated 11.10.2019. It is also not disputed that the representations of the petitioner dated 26.10.2019 and 11.11.2019 seeking for further time to sent reply to the show cause notice was received by the respondent. It is not the case that the petitioner is admitting the liability as per the show cause notice. He has been disputing the same even in their representations dated 26.10.2019 as well as on 11.11.2019. However, they sought further time to give their detailed reply to the defects pointed out by the respondent in the show cause notice, dated 11.10.2019. When there are so many defects pointed out, naturally the petitioner will need sufficient time to reply. However, despite the representations given by the petitioner seeking for further time, the respondent has passed the impugned assessment orders on 19.11.2019. In the impugned assessment orders, the representations given by the petitioner are reflected as Serial numbers 4 and 6. However, no reason has been given in the impugned assessment order as to why the same has been rejected by the respondent. As seen from the proceedings, the show cause notice is dated 11.10.2019 and the impugned assessment order is dated 19.11.2019, within a short span of little more than a month, from the date of the show cause notice, the impugned assessment orders have been passed.

12.Section 75 (5) of the Central Goods and Service Act, 2017, which is in *pari materia* with Tamil Nadu Goods and Service Tax Act, 2017, reads as follows:

> *"75(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing: Provided that no such adjournment shall be granted for more than three times to a person during the proceedings."*

13.It is clear from the aforementioned section that the respondent has got the power to grant further time to reply to the show cause notice if sufficient cause is shown by the dealer (assessee). The proviso also makes it clear that the respondent has got the power to grant three extensions to the dealer (assessee) for submission of reply. In the instant case, the reason for seeking extension of time by the petitioner to submit their reply was that they have to consult an Auditor with regard to the defects pointed out by the respondent in the show cause notice. When 33 defects have been pointed by the respondent for the assessment year 2017-18 and 38 defects for the assessment year 2018-19, and that too when spot inspection was conducted by the Enforcement Wing Officials of the respondent for a period of 22 days, this Court is of the considered view that the reason given by the petitioner for seeking extension of time to send reply to the show cause notice is a genuine one and they have shown sufficient cause for seeking extension. Admittedly, the respondent has also not considered, whether the reasons given by the petitioner is a genuine one or not in any of their correspondence or in the impugned assessment orders. As observed earlier, the show cause notice was issued on 11.10.2019 and the impugned assessment orders has been passed on 19.11.2019, within a very short span of time.

14.After giving due consideration to the aforementioned factors, this Court is of the considered view that principles of natural justice has been violated, as no proper reasons have been given by the respondent for rejecting the petitioner's request for extension of time to send a reply to the show cause notice and as seen from the impugned assessment orders, a fair hearing was also not afforded to the petitioner.

15.The Single Bench judgment of the Madras High Court relied upon by the learned counsel for the petitioner, dated 26.10.2013, passed in *W.P.(MD).No.2194 to 2199 of 2013* in the case of *Tvl.Steel Mart Private limited Vs. The Commercial Tax Officer* is squarely applicable to the facts of the instant case.

16.The tax demand under the impugned assessment orders almost works out to Rs.1 Crore (Rupees One crore). After giving due consideration to the same, this Court is of the considered view that the petitioner must be put on terms before the impugned assessment orders are quashed.

17.Accordingly, the petitioner is directed to pay a sum of Rs.5,00,000/- (Rupees five lakhs only) to the respondent on or before 11.01.2021 and on receipt of the same, the impugned assessment orders dated 19.11.2019 passed by the respondent for the assessment years 2017-2018, 2018-2019 shall stand quashed and the matter remanded back to the respondent for fresh consideration and the respondent shall pass final orders on merits and in accordance with law after affording sufficient opportunity to the petitioner and also granting them right of personal hearing, within a period of twelve weeks thereafter.

18.With the aforesaid directions, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Tax Officer (Inspection Cell),
Virudhunagar,
Tirunelveli Division,
Commercial Tax Buildings,
Virudhunagar.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-25350[F] dated 14/12/2020)
+1 CC to the SPL GP (SR-25582[F] dated 15/12/2020)

W.P.(MD).Nos.2603 and 2604 of 2020
11.12.2020

NS(CO)
CS(29.12.2020) 6P 4C