BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.11.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)No.2609 of 2020
and
W.M.P.(MD),No.2255 of 2020

Tvl.J.F.International,
Represented by its Proprietor,
K.B.Rajkamal Hameed ... 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 State Tax Officer (Intelligence),
Inspection Cell-IV,
Commercial Taxes Complex,
Dr.Thangaraj Road, Madurai-625 020.

3.The Assistant Commissioner (ST),
K.K.Nagar Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Road, Madurai-625 020. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in GSTIN-33ATGPR7578D1ZD/2017-18, dated 08.11.2019 and quash the same.

For Petitioner : Mr.B.Rooban

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER
(This Petition was heard through the Video Conferencing)

This Writ Petition has been filed challenging the assessment order passed by the second respondent on 08.11.2019. The petitioner has challenged the impugned assessment order on the ground that it is ex-facie, arbitrary and illegal and amounts to gross violation of principles of natural justice.

2. Heard Mr.B.Rooban, learned counsel appearing for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents.

3. It is the contention of the petitioner that to the pre-assessment notice dated 16.10.2019, the petitioner had sent a detailed reply on 18.10.2019, raising various objections. The objections included the following:-

> "He is ready and willing to produce books of accounts and he has claimed only the eligible input tax credit under GSTR-3B returns filed by him with the respondent."

4. It is the contention of the petitioner that despite sending replies on 10.10.2019, 11.10.2019 and on 18.10.2019, the same have not been considered by the respondents under the impugned assessment order. Under such circumstances, this Writ Petition has been filed.

5. The learned counsel appearing for the petitioner drew the attention of this Court to the various replies sent by the petitioner to the notices sent by the second respondent and he would point out that in all those replies, the petitioner has been reiterating that he is ready and willing to produce books of accounts. He would further submit that the petitioner has claimed only eligible input tax credit and by an erroneous assessment order, the second respondent has observed that the petitioner has not maintained any books of accounts and the claim of the input tax credit by the petitioner is not genuine.

6. However, Mrs.J.Padmavathi Devi, learned Special Government Pleader representing the respondents would submit that the objections raised by the petitioner have been duly considered under the impugned assessment order and if the petitioner is aggrieved by the same, he has to necessarily prefer the statutory appeal prescribed under the Tamil Nadu Goods and Services Tax Act, 2017. But, instead, he has approached this Court under Article 226 of the Constitution of India which according to her is not maintainable. she would also contend that the petitioner himself has alleged that books of accounts have been lost and he has given a complaint to the Police and an F.I.R., has been registered in respect of the lost books of accounts. Therefore, according to her, the contention of the petitioner that the petitioner is always ready and willing to furnish books of accounts is incorrect.

7. This Court has perused and examined the impugned assessment order as well as the objections raised by the petitioner before the respondents. The petitioner has sent replies to the notices sent by the respondents on 10.10.2019, 11.10.2019 and 18.10.2019. In all those replies, the petitioner has always expressed his readiness and willingness to produce books of accounts. In the impugned assessment order, the respondents have observed that at the time of inspection conducted on 10.09.2019 and 16.09.2019, in the business premises of the petitioner, the petitioner had deposed that they are not maintaining any books of accounts. However, a copy of the statement, by which the petitioner is alleged to have been deposed that they are not maintaining any books of accounts, is not reflected in the impugned assessment order.

8. The learned counsel appearing for the petitioner drew the attention of this Court to a judgment rendered by a learned single Bench of this Court in ***W.P.(MD).Nos.7784 and 7785 of 2007*** in the case of ***M/s.Amutha Metals Vs. The Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai,*** dated 02.03.2007, involving a similar statement made by the dealer before the Inspecting Officials deposed by him. While considering the said statement, the learned Single Judge has observed that the Assessing Officer has to independently consider the said statement by giving valid reasons and should not blindly accept the statement made by the dealer before the Inspecting Officials. In the case on hand, the Assessing Officer has blindly accepted the alleged statement made by the petitioner (Dealer) before the Inspecting Officials that they are not maintaining books of accounts. Therefore, the aforesaid decision relied upon by the learned counsel appearing for the petitioner, is squarely applicable to the facts of the instant case.

9. In the instant case, the objections raised by the petitioner through their various replies, in which they have reiterated that they are ready and willing to produce books of accounts, were not considered in the impugned assessment order. But the impugned assessment order only based on the alleged deposition made by the petitioner before the Inspecting Officials that they are not maintaining books of accounts without any independent assessment. This Court has also perused and examined the various replies sent by the petitioner and as seen from the said replies, there is no admission on the part of the petitioner that they were not maintaining books of accounts at the time when the Inspecting Offiicials visited the petitioner's place of business.

10. It is also the contention of the petitioner that they have claimed only the eligible input tax credit and there is no bogus claim. However, as seen from the impugned assessment order, as observed earlier, the respondents have mechanically and blindly accepted the alleged statement given by the petitioner before the Inspecting Officials without independently giving reasons after duly considering the objections raised by the petitioner, wherein, they have categorically pleaded that they are always ready and willing to furnish books of accounts to the respondent. The respondents have also not duly considered in the impugned assessment order with regard to the petitioner's claim of input tax credit as per GSTR-3B filed by him.

11. For the foregoing reasons, the impugned assessment order passed by the second respondent is arbitrary and is in violation of the principles of natural justice, since no sufficient opportunity was granted to the petitioner nor did the respondents consider all the objections raised by the petitioner.

12. In the result, the impugned assessment order dated 08.11.2019 passed by the second respondent is hereby quashed and the matter is remanded back to the second respondent for fresh consideration and the second respondent shall pass final orders on merits and in accordance with law, after giving sufficient opportunity to the petitioner including granting them the right of personal hearing, within a period of eight weeks from the date of receipt of a copy of this order.

13. With the aforesaid direction, the Writ Petition stands disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(P & A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

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
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Commercial Taxes, Ezhilagam, Chepauk,
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