BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **01.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**

W.P.(MD)Nos.573 & 574 of 2019
and
W.M.P.(MD).Nos.3633, 3634, 462 and 463 of 2019

W.P.(MD).No.573 of 2019

Tvl. Sri Meenakshi Traders,
Represented by its Proprietor,
V.Muthukumar ... 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,
Palayamkottai Assessment Circle,
Commercial Tax Building,
Reserve Line Road, Palayamkottai,
Thirunelveli District-627 002. ... 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 proceeding No.33985566916 / 2013-14 dated 15.10.2018 and quash the same.

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(in both Writ Petitions)

For Petitioner : Mr.B.Rooban
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
(in both Writ Petitions)

COMMON ORDER

These Writ Petitions have been filed challenging the assessment orders dated 15.10.2018 passed by the second respondent under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, for the assessment years 2013-2014 and 2014-2015.

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

3. The primary ground raised by the petitioner in these Writ Petitions is that despite the petitioner having sent replies to the pre-revision assessment notices sent by the second respondent for the assessment years 2013-2014 and 2014-2015, the same has not been considered by the second respondent in the impugned assessment orders and no personal hearing was also afforded by the second respondent in the impugned assessment proceedings.

4. The learned counsel for the petitioner drew the attention of this Court to the replies dated 30.12.2015 sent on 02.01.2016 and one more copy of the same reply along with the covering letter sent on 16.08.2019, which was acknowledged by the second respondent on 20.08.2018.

5. The learned counsel also drew the attention of this Court to the notices dated 07.08.2018 sent by the second respondent to the petitioner intimating that till date, no reply was received for the revision of assessment notices issued by the second respondent. According to him, by total non-application of mind, the notices, dated 07.08.2018 have been issued by the second respondent, since the petitioner had already sent his reply to the revision of assessment notices as early as on 02.01.2016 itself.

6. The learned counsel also drew the attention of this Court to the impugned assessment orders and would submit that despite sending replies to the revision of assessment notices, the second respondent has not considered the same in the impugned assessment orders and has also not afforded any personal hearing to the petitioner in the impugned assessment proceedings. Therefore, according to him, the impugned assessment orders for the assessment years 2013-14 and 2014-15 are arbitrary and is in violation of the principles of natural justice.

7. Per contra, Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondents, on instructions, would submit that, sufficient opportunity was granted to the petitioner to place all his submissions with regard to the impugned assessment proceedings. She also drew the attention of this Court to the counter affidavit filed by the respondents and would submit that despite several opportunities granted to the petitioner by the respondents, the petitioner has not submitted any reply to the revision of assessment notices issued by them. According to her, replies referred to by the learned counsel appearing for the petitioner were never received by the respondents. Hence, the assessment orders are passed based on the available records only. According to her, principles of natural justice has not been violated.

8. The petitioner has produced the delivery receipt dated 20.08.2018 which discloses the fact that the reply letter sent by the petitioner pertaining to TIN No. 33985566916 / 2013-2014 and 2014-15 was received by the Assistant Commissioner (CT), Palayamkottai. The Office of the Assistant Commissioner has also acknowledged the receipt of the reply sent by the petitioner. It is the consistent stand of the petitioner that a reply dated 30.12.2015 was sent on 02.01.2016 to the revision of assessment notices sent by the second respondent. Having produced before this Court a copy of the reply for the revision of assessment notices and when no contra evidence has been produced by the respondents with regard to the non-receipt of the same, this Court will have to necessarily accept the contentions of the petitioner that he had sent replies to the revision of assessment notices by the respondents. The benefit of doubt must always be given to the dealer (Assessee).

9. In the counter affidavit filed by the respondents, they have not specifically denied the non-receipt of the reply dated 30.12.2015 sent by the petitioner to the revision of assessment notices. As seen from the assessment orders, no personal hearing has been afforded to the petitioner, though the respondents in their counter affidavit have stated that sufficient opportunity was granted to the petitioner to raise all their objections with regard to the revision of assessment proceedings initiated by the second respondent.

10. It is settled law that personal hearing is mandatory. Hence, this Court is of the considered view that in view of the non-consideration of the replies sent by the petitioner for the revision of assessment notices sent by the second respondent and for not affording personal hearing to the petitioner in the assessment proceedings, the second respondent has violated the principles of natural justice while passing the impugned assessment orders for the assessment years 2013-2014 and 2014-2015.

11. For the foregoing reasons, the impugned orders dated 15.10.2018 passed by the second respondent in proceedings No.33985566916 / 2013-14 and 2014-15, dated 15.10.2018 are 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 affording sufficient opportunity to the petitioner to raise all objections available to him under law and after affording him the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order.

12. With the aforesaid directions, these Writ Petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are 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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+1 CC to M/s.B. ROOBAN, Advocate (SR-23583[F] dated 02/12/2020)

W.P.(MD)Nos.573 & 574 of 2019
01.12.2020

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