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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **18.11.2020**

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P(MD).Nos.16089 & 16090 of 2020

W.P.(MD).No.16089 of 2020
Tvl. Genus Electrotech Limited,
46-C, Municipal Office Compound,
Melapalayam, Palayamkottai,
Tirunelveli-627 005.
(Represented by Authorized Signatory),
Shri N.Mahatmaa .. Petitioner

Vs.

The Assistant Commissioner (State Tax) (FAC),
Commercial Tax Building Complex,
A.R.Line Road, Palayamkottai, Tirunelveli-627 002. .. Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for the records of the impugned order of the respondent in TIN:33545564636/2014-2015, dated 08.10.2020 and quash the same.

W.P.(MD).No.16090 of 2020

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46-C, Municipal Office Compound,
Melapalayam, Palayamkottai,
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Vs.

The Assistant Commissioner (State Tax) (FAC),
Commercial Tax Building Complex,
A.R.Line Road, Palayamkottai, Tirunelveli-627 002. .. Respondent

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for the records of the impugned order of the respondent in TIN:33545564636/2015-2016, dated 09.10.2020 and quash the same.

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For Petitioner : Mr.S.Jaikumar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
(In both Writ Petitions)

COMMON ORDER

(These Writ Petitions were heard through Video Conferencing)

These Writ Petitions have been filed challenging the assessment orders passing against the petitioner for the years 2014-2015 and 2015-2016. The assessment years have been passed under the Tamil Nadu Value Added Tax Act, 2006.

2. Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice on behalf of the respondent in both these Writ Petitions. By consent of both parties, these Writ Petitions are taken up for final disposal at the admission stage itself.

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

4. The case of the petitioner is that the respondent is having jurisdiction to levy tax only on such transaction of sale or purchase happening within the State of Tamil Nadu. It is his case that in violation of the same, the respondent, ignoring the statement of VAT return for the month of August 2014 filed by the petitioner with the Gujarat Government vide impugned order dated 08.10.2020, has demanded tax on the sales transactions that took place in Gujarat State.

5. The learned counsel appearing for the petitioner drew the attention of this Court to the notice dated 27.08.2020, issued by the respondent calling upon the petitioner to produce the details of the documents, which are filed with the Gujarat Tax Department indicating the sale of assets turnover and taxes paid thereon along with a copy of the connected sale invoices which relating to the sales at Gujarat.

6. The learned counsel also drew the attention of this Court to the reply sent by the petitioner to the said notice on 19.09.2020 and in particular, he referred to the enclosures made by the petitioner (Dealer) along with the said reply, wherein, the petitioner has enclosed:-

(a).Gujarat VAT Form 201 A for the month of August 2014.

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(b).CA certificate certifying sales of captial assets along with other revenue transactions.

(c).CA certificate regarding written off of assets.

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7. Thereafter, the learned counsel appearing for the petitioner drew the attention of this Court to the impugned assessment orders dated 08.10.2020 and 09.10.2020.

8. Referring to the same, the learned counsel appearing for the petitioner particularly referred to the discussion paragraphs with regard to Point No.1, wherein, the respondent has observed that the petitioner has submitted only annexure details and has not submitted tax invoices made to the Gujarat Government through their VAT return. It has also been observed in the impugned assessment orders that the invoices produced by the petitioner are noway connected with the said sale of assets.

9. According to the learned counsel appearing for the petitioner, arbitrarily and by total non application of mind, the impugned assessment orders have been passed despite the fact that all the requirements of the respondent as per the notice dated 27.08.2020 have been duly complied with by the petitioner.

10. The learned counsel appearing for the petitioner drew the attention of this Court to the impugned assessment orders and would submit that no personal hearing was afforded to the petitioner before passing of the impugned assessment orders. He also drew the attention of this Court to the circular issued by the Office of the Principal Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai-5, dated 03.02.2014, wherein, according to him, it has been made clear that the personal hearing is mandatory.

11. Per contra, Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent would submit that only based on the materials available before the respondent, the impugned assessment orders have been passed. According to her, tax invoices pertaining to the sales at Gujarat by the petitioner were not placed before the respondent. It is also her case that personal hearing was afforded to the petitioner through video conferencing. Therefore, according to her, adequate opportunity was granted to the petitioner before passing of the impugned assessment orders and there is no violation of principles of natural justice.

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12. This Court has perused and examined the materials available on record.

13. In the notice dated 27.08.2020, issued by the respondent to the petitioner, the petitioner was called upon to produce details of the documents, which were filed before the Gujarat Tax Department with regard to the sale of assets by the petitioner at Gujarat. The petitioner was also called upon to produce copies of the sales invoices pertaining to the sales at Gujarat. In response to the said notice, the petitioner by their reply dated 19.09.2020 has enclosed the following documents:-

(a).Gujarat VAT Form 201 A for the month of August 2014.

(b).CA certificate certifying sales of captial assets along with other revenue transactions.

(c).CA certificate regarding written off of assets.

14. Gujarat VAT Form 201 A for the month of August 2014 gives the details of the invoices raised by the petitioner for the sale of assets at Gujarat. The tax invoices for which the petitioner is not liable to pay tax at Tamil Nadu has also been enclosed along with the typed set of papers. The said tax invoices tallies with the list contained in VAT Form 201 A filed before the Tax Department by the petitioner at Gujarat.

15. However, as seen from the impugned assessment orders, the respondent has not applied its mind to the VAT Form-201 A filed by the petitioner before the Commercial Tax Department at Gujarat. The respondent has also not applied its mind to the tax invoices enclosed by the petitioner along with the reply dated 19.09.2020. In the impugned order passed by total non application of mind, the respondent has observed that the petitioner had submitted only the annexure details, but, has not submitted the details of the tax paid by the petitioner to the Gujarat Government through their VAT return. However, as observed above, the petitioner has infact submitted the details sought for by the respondent as per their notice dated 27.08.2020. As seen from the impugned assessment orders, the respondent has not afforded personal hearing to the petitioner before passing of the assessment orders.

16. Though Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondent would submit that personal hearing was afforded to the petitioner through video conferencing, the same is not disclosed a place in the impugned assessment orders. Therefore, it can be construed that no personal hearing was afforded to the petitioner by the respondent before passing of the impugned assessment orders. The Circular dated 03.02.2014 issued by the office of the Principal Secretary/Commissioner of Commercial Taxes,

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Chepauk, Chennai-5, also makes it clear that personal hearing is mandatory before passing of assessment orders. The respondent has ignored their own circular dated 03.02.2014 and has not afforded personal hearing to the petitioner.

17. For the foregoing reasons, this Court is of the considered view that the impugned assessment orders have been passed against the petitioner by total non application of mind and by violation of principles of natural justice. Hence, the impugned assessment orders are hereby quashed and the matter is remanded back to the respondent for fresh consideration and the respondent shall pass final orders after giving sufficient opportunity to the petitioner including granting them the right of personal hearing and pass final orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

18. With the above observations and directions, these Writ Petitions stand disposed of. No costs.

Sd/-

Assistant Registrar (Crl Side)

// 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

The Assistant Commissioner (State Tax) (FAC),
Commercial Tax Building Complex,
A.R.Line Road, Palayamkottai,Tirunelveli-627 002.

+1 CC to M/s.GP (SR-22421[F] dated 20/11/2020)

W.P(MD).Nos.16089 & 16090 of 2020
18.11.2020

svn(CO)
KK(08.12.2020) 5P 3C

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