BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2020

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THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P.(MD).Nos.17868, 17873 & 17876 of 2020
and W.M.P.(MD).Nos.14901, 14903 & 14905 of 2020

Tvl.Chendur Enterprises,
Represented by its Proprietrix S.Anusuya
888/2. Courtallam Road,
Piranoor Border,
Shencottai. .. Petitioner in all writ petitions

Vs.

The State Tax Officer (Inspection),
(Intelligence Wing)
Tirunelveli. .. Respondent in all writ petitions

COMMON PRAYER: Writ Petitions filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus, calling for the records in GSTIN 33ABMPA7576Q1Z0/2017-18, GSTIN 33ABMPA7576Q1Z0/2018-2019 and GSTIN 33ABMPA7576Q1Z0/2019 - 2020 all Dated 31.10.2020, issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment order afresh by considering the representation dated 23.10.2020 judicially including the opportunity of being heard.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

COMMON ORDER

(These writ petitions are heard through video conference)

These writ petitions have been filed challenging the assessment orders, all dated 31.10.2020, passed against the petitioner for the assessment years 2017-2018, 2018-2019, 2019-2020 under the Goods and Service Tax Act.

2.Heard Mr.S.Karunakar, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader, who accepts notice on behalf of the respondent.

3.By consent of both parties, these writ petitions are taken up for final disposal at the admission stage itself.

4.The petitioner has challenged the impugned assessment orders on the ground that the respondents have violated the principles of natural justice while passing the impugned assessment orders. It is their case that based on the Inspection conducted by the officials of the respondent, a show cause notice was issued to the petitioner in the month of August 2020 and within a short period of two months i.e., on 31.10.2020, the impugned assessment orders have been passed. The basis for the show cause notice is that the petitioner has submitted fake invoices to the respondent for the purpose of claiming input tax credit. It is the case of the petitioner that despite several reminders, calling upon the respondent to furnish copies of the seized documents, the respondent furnished the documents only on 29.10.2020. However, according to the petitioner, within two days from the date of furnishing of the copies of the seized documents to the petitioner, the impugned assessment orders have been passed on 31.10.2020 itself, without giving sufficient opportunity to the petitioner to put forward their objections in the assessment proceedings. It is the case of the petitioner that subsequent to the furnishing of the copies of the seized documents, no personal hearing was afforded. In such circumstances, these writ petitions have been filed on the ground of violation of principles of natural justice by the respondent, while passing the impugned assessment orders.

5.The learned counsel for the petitioner drew the attention of this court to the various documents filed in the typed set of papers filed along with these writ petitions and in particular, he referred to the reply sent by the petitioner to the respondent, requesting the respondent to furnish the copies of the seized documents. He also referred to the date of receipt of the documents by the petitioner, which were seized by the respondent during their spot inspection at the petitioner's business premises. After referring to the documents, the learned counsel for the petitioner would submit that despite several reminders, the respondent furnished the copies of the seized documents only on 29.10.2020. However, according to him, without giving sufficient opportunity to the petitioner to raise all objections, the respondent has passed the impugned assessment orders on 31.10.2020, within two days from the date of the furnishing the copies of the documents to the petitioner. Therefore, according to the petitioner, the respondent has violated the principles of natural justice, while passing the impugned orders. It is also the contention of the petitioner that the documents submitted by the petitioner, while filing the returns with the respondent are all genuine documents and hence, the petitioner is not liable to pay tax as demanded under the impugned assessment orders.

6.Per contra, the learned Special Government Pleader appearing for the respondent would submit that sufficient opportunity was granted to the petitioner before passing of the impugned assessment orders. According to her, personal hearing was also afforded to the petitioner. Hence, according to her, principles of natural justice has not been violated. Therefore, it is her contention that the only remedy available to the petitioner is to challenge the impugned assessment orders by filing the statutory appeal provided under the Goods and Service Tax Act.

7.It is not in dispute that the petitioner has been repeatedly requesting the respondent to furnish copies of the documents, which were seized by them during the spot inspection at the business premises of the petitioner on 21.02.2020. Admittedly, the first show cause notice was sent by the respondent only on 10.08.2020. It is also not in dispute that the documents requested by the petitioner through his replies were furnished to them only on 29.10.2020 and the impugned orders have been passed on 31.10.2020, within two days from the date of furnishing the documents to the petitioner. The show cause notice was issued in the month of August 2020 and the impugned assessment orders have been passed on 31.10.2020, within a short span of time.

8.After giving due consideration to the aforementioned factors, this Court is of the considered view that principles of natural justice has been violated by the respondent, while passing the impugned assessment orders. However, considering the huge tax liability that the respondent claims the petitioner is payable, this Court is of the considered view that the petitioner must be put on terms before the assessment orders are quashed. This Court is of the considered view that the petitioner shall pay a sum of Rs.2,00,000/- for each of the assessment years to the respondent on or before 05.01.2021. On such payment, the impugned orders shall be quashed and the matter is remanded back to the respondent for fresh consideration on merits and in accordance with law.

9.For the foregoing reasons, this Court directs the petitioner to pay a sum of Rs.2,00,000/- towards each of the assessment orders, which are impugned, to the respondent on or before 05.01.2021 and on receipt of the said amount before the stipulated time, the impugned assessment orders dated 31.10.2020 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 to raise all objections available to them under law and also afford them the right of personal hearing, within a period of twelve weeks from the date of receipt of a copy of this order. It is made clear that if the conditional order is not complied with by the petitioner, within the stipulated time, this writ petition shall stand automatically dismissed.

10.With the aforesaid direction, these writ petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// 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),
(Intelligence Wing)
Tirunelveli.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-24566[F] dated 09/12/2020)

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17873 & 17876 of 2020
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TR(16.12.2020) 4P 3C