BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)Nos.17982, 17989 & 17990 of 2020
and
W.M.P(MD)Nos.14988, 14993 & 14994 of 2020

B.Pandy ... Petitioner in all W.P.'s

Vs

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai 600 005

2. The Assistant Commissioner (ST),
West Veli Street Circle,
Commercial Taxes Complex,
Dr.Thangaraj salai,
Madurai 625 020 ... Respondents in all W.P.'s

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the 2nd respondent in Assessment Nos.33226329366/2012-13, 33226329366/2013-14 & 33226329366/2014-15 respectively dated 03.02.2020 and quash the same.

In all cases:

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

COMMON ORDER

Since the issue involved in all these writ petitions are similar in nature, they are disposed of by this common order.

2. Mrs.J.Padmavathi Devi, learned Special Government Pleader accepts notice for the respondents. By consent of both sides, these writ petitions are taken up for final disposal at the stage of admission itself.

3. These writ petitions have been filed challenging the impugned assessment orders dated 03.02.2020 passed by the second respondent against the petitioner for the assessment years 2012-13, 2013-14 & 2014-15 respectively under Section 22 of the Tamil Nadu Value Added Tax Act (hereinafter referred to as the 'Act').

4. The petitioner has challenged the impugned assessment orders on the ground that the second respondent has violated the principles of natural justice while passing the impugned assessment orders. According to the petitioner, despite filing of the annual returns by the petitioner and without considering the same, the impugned assessment orders have been passed on the ground that no actual returns were filed for the assessment years 2012-13, 2013-14 and 2014-15.

5. It is the case of the petitioner that a detailed reply was given to the second respondent on 27.11.2019 to the provisional assessment notice issued by the second respondent, dated 22.07.2019 wherein, the petitioner has pointed out that annual returns were submitted to them. It is also their case that, as per the annual returns submitted by the petitioner, it is only the respondents who have to refund the tax and no amount of tax is payable by the petitioner.

6. It is also the further case of the petitioner that they have not received any notice from the respondents calling upon the petitioner for personal hearing in the impugned assessment proceedings. In such circumstances, these writ petitions has been filed.

7. Learned counsel for the petitioner drew the attention of this Court to the reply dated 27.11.2019 sent by the petitioner, to the provisional assessment notice issued by the second respondent on 22.07.2019 and would point out that the petitioner has informed the respondents that annual returns were filed by them and that they are not liable to pay any tax, as demanded by the respondents in their notice dated 22.07.2019.

8. Learned counsel for the petitioner also drew the attention of this Court to the impugned assessment orders and would submit that though the second respondent has extracted the reply sent by the petitioner, without calling upon the petitioner to produce proof of filing of returns, the second respondent in the impugned assessment orders has arbitrarily observed that, no annual returns were filed by the petitioner.

9. Learned counsel for the petitioner also submitted that no personal hearing notice was received by the petitioner and

therefore, personal hearing was also not afforded by the second respondent in the impugned proceedings. He further drew the attention of this Court to the annual returns filed by the petitioner manually for the Assessment years 2012-2013, 2013-2014 & 2014-2015 wherein, it is disclosed that excess tax has been paid by the petitioner and it is only the second respondent , who will have to refund the excess tax to the petitioner.

10. In the typed set of papers filed along with these writ petitions, a copy of the delivery book maintained by the petitioner's accountant has also been produced, which according to the petitioner is the acknowledgment given by the second respondent for having received the annual returns from the petitioner for the assessment years 2012-13, 2013-14 and 2014-15. Therefore, according to the learned counsel for the petitioner, all the aforementioned factors have not been considered by the second respondent while passing the impugned assessment orders and therefore, the impugned assessment orders have to be quashed on the ground of violation of the principles of natural justice.

11. Per contra, the learned Special Government Pleader appearing on behalf of the respondents would submit that, personal hearing was afforded to the petitioner. She has also placed before this Court the personal hearing notice dated 08.01.2020 sent by the second respondent to the petitioner as well as the acknowledgment card for having received the same. She would also submit that the annual returns will have to be filed by the petitioner only electronically and not manually. Therefore, the annual returns alledgedly submitted by the petitioner is not a valid one. She would also submit that since in the impugned assessment orders, the respondents have considered the objections raised by the petitioner vide his reply dated 27.11.2019, the only remedy available to the petitioner is to file statutory appeal under the Act. Hence, according to her, these writ petitions are not maintainable.

12. At the outset, this Court would like to point out that the benefit of doubt should always be given to the Assesse. In the case on hand, the petitioner claims that he has filed the annual returns for the Assessment years 2012-13, 2013-14 and 2014-15. However, the same is disputed by the respondents. According to the petitioner, the annual returns were filed manually. It is the case of the respondents that the same will have to be filed only electronically and manual returns are not acceptable. However, as seen from the impugned assessment orders, even though the petitioner in his reply dated 27.11.2019 to the provisional assessment notice issued by the second respondent dated 22.07.2019, has categorically stated that annual returns for the assessment years 2012-13, 2013-14 and 2014-15 were filed, no

proper reasons have been given by the respondents in the assessment orders for having rejected the contentions of the petitioner.

13. Further, the petitioner has produced before this Court, the annual returns for the Assessment years 2012-13, 2013-14 and 2014-15, which he claims to have been filed with the respondents manually. He has also produced a delivery book which discloses the receipt of the same by the respondents. Even though the same is disputed by the learned Special Government Pleader appearing for the respondents, as observed earlier, the benefit of doubt should always be given to the Assesse.

14. The learned counsel appearing for the petitioner, on instructions, has also disputed the receipt of the personal hearing notice dated 08.01.2020 sent by the second respondent to the petitioner. This Court has also perused the personal hearing notice dated 08.01.2020 as well as the acknowledgment card. As seen from the acknowledgment card, the same has not been received by Mr.B.Pandy, who is the petitioner (dealer) but has been received by some other person, even though the address of the petitioner is correct. While that be so, the benefit of doubt must be given to the petitioner (dealer) and his contentions that he has not received the same will have to be accepted by this Court.

15. As seen from the reply dated 27.11.2019, the petitioner has also denied his liability to pay tax as demanded by the respondents under the impugned assessment orders. While that be so and after considering the above mentioned factors, sufficient opportunity will have to be granted to the petitioner to raise all objections before the second respondent. As observed earlier, in the instant case, the petitioner has not been afforded personal hearing and his contentions that he has already filed the returns is not considered by the second respondent properly and no reasons have been given as to why the annual returns submitted by the petitioners manually was rejected by them.

16. Therefore, this Court is of the considered view that the principles of natural justice has been violated by the second respondent while passing the impugned assessment orders.

17. For the foregoing reasons, the impugned assessment orders 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, including granting them the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order.

18. With these observations and directions, the writ petitions stand disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (W)

// True Copy //

/ /2021
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:

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005

2. The Assistant Commissioner (ST),
West Veli Street Circle,
Commercial Taxes Complex,
Dr.Thangaraj salai, Madurai 625 020

+1 cc to Mr.R.Veera Manikandan , Advocate SR.No.24819

Common order made in
W.P.(MD)Nos.17982, 17989 & 17990 of 2020

KM (08.01.2021) 5P 4C