BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **15.12.2020**
CORAM:
THE HONOURABLE MR.JUSTICE **ABDUL QUDDHOSE**
W.P.(MD)Nos.18521, 18522 & 18524 of 2020
and
W.M.P.(MD).Nos.15484, 15486 and 15488 of 2020
(Through the Video Conferencing)

W.P.(MD)No.18521 of 2020

Tvl. Everest International,
Represented by its Proprietor,
M.Kamal Bharat ... 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 Assistant Commissioner (ST),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nadar,
Bodinayakkanur, Theni District-625 513. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33065081840 / 2012-2013 dated 16.11.2020 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

W.P.(MD)No.18522 of 2020

Tvl. Everest International,
Represented by its Proprietor,
M.Kamal Bharat ... 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 Assistant Commissioner (ST),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nadar,
Bodinayakkanur, Theni District-625 513. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33065081840 / 2013-2014 dated 16.11.2020 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

W.P.(MD)No.18524 of 2020

Tvl. Everest International,
Represented by its Proprietor,
M.Kamal Bharat ... 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 Assistant Commissioner (ST),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nadar,
Bodinayakkanur, Theni District-625 513. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33065081840 / 2014-2015 dated 16.11.2020 and quash the same and consequently direct the second respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

For Petitioner : Mr.R.Veeramanikandan

For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In all Writ Petitions)

COMMON ORDER

These Writ Petitions have been filed challenging the impugned assessment orders dated 16.11.2020 passed by the second respondent against the petitioner for the assessment years 2012-2013, 2013-2014 and 2014-2015.

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

3. Heard Mr.R.Veeramanikandan, learned counsel for the petitioner and Mrs.J.Padmavathi Devi, learned Special Government Pleader for the respondents in all these Writ Petitions.

4. The petitioner has challenged the impugned assessment orders passed under Section 27(2) of the Tamil Nadu Value Added Tax Act, 2006, on the ground that principles of natural justice has been violated by the second respondent, while passing the impugned assessment orders. According to him, there was no independent assessment made by the second respondent and mechanically, the second respondent has accepted the audit report of the Accountant General, without giving sufficient opportunity to the petitioner.

5. It is also the case of the petitioner that by his reply dated 23.03.2020, he has categorically stated that all the purchases effected by them have been duly reported in their monthly returns and the respondents have also issued 'C' Forms for the said purchases. In all the replies, they have requested the respondents to provide bill and date wise details for the alleged unreported purchases from the Spices Board, Cochin. However, it is the case of the petitioner that despite the said reply and without furnishing the documents sought for in their reply, the impugned assessment orders have been passed in violation of the principles of natural justice. In such circumstances, these Writ Petitions have been filed.

6. The learned counsel for the petitioner drew the attention of this Court to the reply dated 23.03.2020 sent by the petitioner to the revision of assessment notices issued by the second respondent under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and would submit that despite the petitioner requesting the respondents to provide bill and date wise details of the alleged unreported purchases made from the Spices Board, Cochin, the respondents have failed to produce the same to the petitioner.

7. Per contra, the learned Special Government Pleader for the respondents would submit that adequate opportunity was granted to the petitioner in the impugned assessment proceedings. According to her, personal hearing was afforded, but, the petitioner did not make use of the said opportunity in the impugned assessment proceedings. Therefore, according to her, the only remedy available to the petitioner is to file the statutory appeal under the Tamil Nadu Value Added Tax Act, 2006 and therefore, the present Writ Petitions are not maintainable.

8. This Court has perused the documents filed along with these Writ Petitions and after hearing the rival submissions, notices the following:-

> The petitioner on receipt of the notice issued under Section 27 (2) of the Tamil Nadu Value Added Tax Act, 2006, has sent a reply on 23.03.2020, wherein, they have requested the respondents to provide the bill and date wise details for unreported purchases which the second respondent claims that the petitioner had suppressed.

9. As seen from the assessment orders dated 16.11.2020, no explanation has been given by the second respondent as to why they are unable to provide the bill and date wise details for the alleged un -reported purchases made by the petitioner from the Spices Board, Cochin.

10. The second respondent has mechanically accepted the audit report of the Accountant General and has come to the conclusion that there is suppression of purchases made from the Spices Board, Cochin, by the petitioner. When the petitioner has categorically denied any suppression of purchases, the second respondent ought to have furnished details of the alleged purchases made from the Spices Board, Cochin, to the petitioner.

11. As seen from the impugned assessment orders, the same has not been done so by the second respondent. A copy of the audit report has also not been furnished by the second respondent to the petitioner.

12. The audit report dated 05.04.2017 which is reflected in the impugned assessment orders, is the basis for the revision of assessments made against the petitioner under Section 27 of the Tamil Nadu Value Added Tax Act, 2006. While that be so, the copy of the same ought to have been furnished to the petitioner. As seen from the impugned assessment orders, the same has not been done so by the respondents. Any quasi judicial authority will have to adhere to the principles of natural justice by affording sufficient opportunity against whom the action has been initiated.

13. As seen from the impugned assessment orders, the second respondent has mechanically accepted the audit report without any independent assessment and without affording sufficient opportunity to the petitioner to place their objections in the revision of assessment proceedings under Section 27 of the Tamil Nadu Value Added Tax Act, 2006.

14. For the foregoing reasons, this Court is of the considered view that principles of natural justice has been violated while passing the impugned assessment orders against the petitioner. In the result, the impugned assessment orders dated 16.11.2020 are hereby quashed and the same 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 adequate opportunity to the petitioner to place all their objections and also granting them the right of personal hearing within a period of twelve weeks from the date of receipt of a copy of this order.

15. It is made clear that the documents that are going to be relied upon by the second respondent while passing the assessment orders under Section 27 of the Tamil Nadu Value Added Tax Act, 2006, against the petitioner will have to be furnished to the petitioner during the assessment proceedings.

16. With the above direction, the Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// 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

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),
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nadar,
Bodinayakkanur, Theni District-625 513.

+1 CC to SGP (SR-26023[F] dated 17/12/2020)

Common order made in
W.P.(MD)Nos.18521, 18522 &
18524 of 2020

15.12.2020

SSS(CO)
NR (30/12/2020) 6P : 4C