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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.(MD)No.9808 of 2018
and
M.P.(MD)No.9003 of 2018

Tvl.Delta Infralogistics (Worldwide) Limited,
Represented by its Authorised Signatory R.Asokan,
No.9, 1st Street, Chidambara Nagar,
Tuticorin. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Tuticorin III Circle,
Commercial Tax Building,
Tuticorin. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records in TIN 33985925137/2014-15, dated 13.03.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass a assessment order afresh after considering the representation dated 07.03.2018.

For Petitioner : Mr.S.Karunakar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the assessment order dated 13.03.2018 passed by the respondent under the TNVAT Act, 2006. The petitioner has filed this writ petition on the ground of violation of principles of natural justice by the respondent while passing the impugned assessment order.

2.It is the contention of the petitioner that the respondent had sent a pre assessment notice on 07.02.2018 informing three defects:-

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The first defect is purchase omission committed by the petitioner, the second defect is sales suppression and the third defect is mismatch between the sales and purchases.

3.It was pointed out by the respondent in their pre assessment notice dated 07.02.2018 that the above defects were found by them during inspection by their Enforcement Wing Officials on 23.02.2017 at the business premises of the petitioner. The petitioner has sent a reply dated 07.03.2018 to the pre assessment notice dated 07.02.2018, wherein, they have categorically submitted that the nature of the business is cargo handling and they are license holders for undertaking stevedoring and shore handling operations in VOC Port Trust, Tuticorin and therefore, TNVAT Act 2006, is not attracted to them. They have also denied all the allegations contained in the pre revision notice issued by the respondent Department on 07.02.2018. According to the petitioner, despite giving a detailed reply denying their liability as well as categorically submitting, TNVAT Act, 2006 will not get attracted to them, under the impugned assessment order, by total non application of mind to the reply dated 07.03.2018, the respondent has passed the impugned assessment order on the ground that during inspection by the Enforcement Wing Officials of the respondent, the petitioner had accepted the defects pointed out by the respondent by signing a sworn statement.

4.It is the contention of the petitioner that the respondent, while passing the impugned assessment order, has totally ignored the reply dated 07.03.2018 sent by them and has not dealt with the contention of the petitioner that TNVAT Act, 2006 will not apply to them. Hence, in such circumstances, this Writ Petition has been filed on the ground of violation of principles of natural justice.

5.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

6.The learned counsel appearing for the petitioner drew the attention of this Court to the pre revision notice dated 07.02.2018 as well as the reply sent by the petitioner dated 07.03.2018. He also drew the attention of this Court to the impugned assessment order. Relying upon the same, the learned counsel for the petitioner would point out that by total non application of mind to the reply dated 07.03.2018, the impugned assessment order has been passed.

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7.Per contra, the learned Special Government Pleader appearing for the respondent would submit that there is a statutory appellate remedy available to the petitioner as against the impugned assessment order under TNVAT Act, 2006. Instead of filing the statutory appeal, the petitioner has preferred this writ petition which is not maintainable. It is also her contention that the reply sent by the petitioner has been duly considered by the respondent while passing the impugned assessment order and only based on the sworn statement given by the petitioner to the Enforcement Wing Officials of the respondent Department, the impugned assessment order has been made. According to her, principles of natural justice has not been violated by the respondents.

8.This Court has perused and examined the pre revision notice dated 07.02.2018, the reply dated 07.03.2018 sent by the petitioner as well as the impugned assessment order. The receipt of the reply dated 07.03.2018 sent by the petitioner to the pre revision notice has not been disputed by the respondent as seen from the impugned assessment order. In the reply dated 07.03.2018, the petitioner has categorically submitted that TNVAT Act, 2006, is not attracted to them, since they are only doing the business of cargo handling and are having license for undertaking stevedoring and shore handling operations in VOC Port Trust, Tuticorin and Customs House. Even though they have taken a categorical stand that TNVAT Act is not attracted, the respondent under the impugned assessment order has not considered the same.

9.It is the case of the respondent that during inspection by their officials at the place of business of the petitioner, a sworn statement accepting liability was given by the petitioner. It is the contention of the respondent in the assessment order that there was a purchase omission committed by the petitioner and sales are not reported as per the check post data and purchases are not reported.

10.In the reply dated 07.03.2018, the petitioner had categorically denied the allegations of the respondent by giving the following reasons:-

(a). They are not dealers in Tipper Body. The Tipper Body is purchased only for the purpose of cargo handling and it is only an asset purchased for their company. This was the reason for not showing the said purchases in their monthly Form I returns.

(b) In respect of the defect, the verification of the check post data through departmental website is concerned, they have submitted that the movement of goods is a part of front loader

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which was under use in Cargo handling and sent for repair to their Head office at Mangalore Work Shop for replacement. According to them, at the time of movement of the goods, they have enclosed a delivery chalan mentioning the details of the goods sent for repair. Form JJ clearly mentions " Not For Sale".

(c) With regard to the mismatch claim, they have submitted that all the above purchases are store goods such as lubricant oil, grease used for the vehicles running in their site for cargo handling. Hence, according to them, the above purchases were not reported in their monthly Form I returns filed for the year 2014-2015.

11.Even though the petitioner has raised all the aforementioned contentions in the reply dated 07.03.2018 to the pre revision notice, dated 07.02.2018, the respondent under the impugned assessment order has not considered the same, but has passed the assessment order only based on the alleged sworn statements signed by the petitioner at the time of inspection by their Enforcement Wing Officials at the place of business of the petitioner. As seen from the impugned assessment order, no personal hearing was afforded to the petitioner before passing of the impugned assessment order.

12.For the foregoing reasons, this Court is of the considered view that principles of natural justice have been violated by the respondent before passing of the impugned assessment order and therefore, the Writ Petition is maintainable. Accordingly, the impugned assessment order passed by the respondent is hereby quashed and the matter is 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 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.

13.With the aforesaid direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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To

The Assistant Commissioner (ST),
Tuticorin III Circle,
Commercial Tax Building,
Tuticorin.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-21555[F] dated 09/11/2020)

W.P.(MD)No.9808 of 2018
and
M.P.(MD)No.9003 of 2018
05.11.2020

sss(CO)
TR(23.11.2020) 5P 3C

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