IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.1675 & 1676 of 2014
& M.P.Nos.1 & 1 of 2014

M/s.Soma Enterprise Limited,
Rep. By its Manager, Mrs.Sri Devi
2, Pillayar Koil Street,
Chennai 600 106. ..Petitioner in both W.Ps.

Vs.

The Assistant Commissioner (CT),
Vadapalani I Assessment Circle,
No.1, Greams Road,
Chennai 600 006. ..Respondent in both W.Ps.

Prayer in W.P.No.1675/2014: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33421464706/2012-13 dated 20.12.2013 and quash the impugned proceedings dated 20.12.2013.

Prayer in W.P.No.1676/2014: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent herein in his proceedings TIN 33421464706/2012-13 dated 13.01.2014 and quash the impugned proceedings dated 13.01.2014 and further direct the respondent to consider the petition filed under Section 84 of the Tamil Nadu Value Added Tax Act, 2006 afresh.

(In both W.Ps.)

For Petitioner : Mr.R.Kumar

For Respondent : Mr.V.Nanmaran
(Government Advocate)

COMMON ORDER

The assessment order passed by the respondent in proceedings dated 20.12.2013, for the Assessment Year 2012-13 and the proceedings dated 13.01.2014, are under challenge in these Writ Petitions respectively. The petitioner-Company is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, 'the TNVAT Act') and an assessee on the file of the respondent. The petitioner is a works and contractor and awarded a contract for construction of pillar with pile foundation and construction of elevated viaduct for rail track between Koyambedu and Ashok Nagar. The petitioner being a works contractor, is liable for assessment under Section 5 of the Act. The petitioner reported their turnover by adding gross profit and arrived deemed sale value and paid the tax. The petitioner reported the turnover in form I monthly return and filed the returns through e-filing.

2.The grievances of the writ petitioner is that the respondent has violated Section 22 (4) proviso clause of the TNVAT Act. The said provision contemplates 'opportunity of being heard'. However, while issuing notice dated 28.10.2013, the respondent has not afforded any personal hearing and in the assessment order dated 20.12.2013, impugned in this Writ Petition, it was wrongly observed that personal hearing was granted. The respondent has not provided any such opportunity of personal hearing to the writ petitioner and thus, the principles of natural justice has been violated. Further, without calling for the books of accounts, the respondent assessed the disposal of assets in other State and raised an arbitrary demand. On receipt of the order, the petitioner filed original TDS Certificates and made a representation that the claim of input tax credit was wrongly mentioned and requested to give credit of the input tax claimed. The petitioner filed a petition dated 13.02.2014 under Section 84 of the TNVAT Act, requesting to rectify the error, enclosing supportive documents. The respondent, without considering the documents, rejected the said petition vide proceedings TIN 33421464706/2012-13 dated 13.01.2014, on the same day of filing of the petition and communicated to the employee of the petitioner.

3.The learned counsel for the petitioner, relied on the judgment of the Hon'ble Division Bench of this Court in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD), reported in [2008] 168 Taxman, 111 (Madras) and the relevant paragraph No.6 is extracted hereunder:

> “6.Though learned counsel appearing for the appellant raised several contentions before us, but only one is sufficient to allow the writ appeal. The main contention is that the order,

> which is impugned in the writ petition, has been passed in violation of the principles of natural justice. Section 263 of the Income-tax Act provides for personal hearing. As already noted, the notice was received by the son-in-law of the appellant, who contacted the appellant in Singapore, who in turn requested him to get one month's time for filing detailed objections. The son-in-law of the appellant sent a petition on 20.03.2006, requesting one months' time for filing objections. Thereafter, the objections came to be filed on 27.03.2006. According to the appellant, his son-in-law was literally forced to file objections on 27.03.2006, and thereafter the impugned order came to be passed by the first respondent. It is not disputed by learned standing counsel appearing for the revenue that no personal hearing was given to the appellant or to his representative. In fact, no date was fixed for hearing and the first respondent went on to pass orders without granting any opportunity of personal hearing to the appellant."

4.Further, in the case of Esjyapee Impex (P) Ltd., Vs. Commercial Tax Officer, Sowcarpet I, reported in [2011] 42 VST 61 (Mad), this Court held that the personal hearing, as contemplated, is the mandatory requirement to be followed, before passing an order of assessment.

5.The respondent is unable to establish that an opportunity of personal hearing was provided to the writ petitioner before passing the impugned assessment order. Therefore, this Court is inclined to remand the matter back to the respondent for fresh consideration and passing of the orders.

6.Accordingly, the impugned assessment orders, passed by the respondent in proceedings TIN 33421464706/2012-13 dated 20.12.2013 and TIN 33421464706/2012-13 dated 13.01.2014 are quashed and the matter is remanded back to the respondent for fresh consideration, by affording an opportunity of personal hearing to the writ petitioner. In this regard, the respondent is directed to communicate the date and time of personal hearing to the writ petitioner and the petitioner, without seeking any adjournment, shall appear before the authority competent and submit their objections, explanations, judgments relied on, documents, etc. On receipt of the objections, the respondent is directed to consider the materials available on record and the pleadings made during the personal hearing and thereafter, pass order on merits and in accordance with law, within a period of three months thereafter.

With this direction, both the Writ Petitions stand allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

1. The Assistant Commissioner (CT),
   Vadapalani I Assessment Circle,
   No.1, Greams Road,
   Chennai 600 006.

2. Section Officer,
   ER Section (Writ)
   High Court, Madras

+2CCs to Mr.R.Kumar, Advocate, Sr.Nos.32296, 32297
+1CC to Special Government Pleader (Taxes), High Court, Madras, Sr.No.32698

W.P.Nos.1675 & 1676 of 2014

AK-II (CO)
K.RK. (26.07.2021)