BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.9262 & 9263 of 2009 and
M.P.(MD)Nos.1 & 1 of 2009

W.P.(MD)No.9262 of 2009

M/s.Dhanadhanya Dwellings (Pvt.) Ltd.,
(Now known as Harihar Dwellings (P) Ltd.,
No.1, (Old No.4-E/25, Raja Colony,
Collector's Office Road,
Trichy - 1. ... Petitioner

Vs.

1. The Deputy Commercial Tax Officer,
Palakarai - I Assessment Circle, Trichy.

2. The Commercial Tax Officer,
Trichy Road Circle, Coimbatore.
(R-2 is suo motu impleaded
vide Order dated 21.08.2019) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TNGST/3521406/2004-2005, quash the assessment order dated 17.07.2009 in so far as it relates to disallowance of the claim of deduction under Section.3-B(2)(d) of the Tamil Nadu General Sales Tax Act, 1959.

W.P.(MD)No.9263 of 2009

M/s.Dhanadhanya Dwellings (Pvt.) Ltd.,
(Now known as Harihar Dwellings (P) Ltd.,
No.1, (Old No.4-E/25, Raja Colony,
Collector's Office Road,
Trichy - 1. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Palakarai - I Assessment Circle,
Trichy. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the respondent in his proceedings in TNGST/3521406/2005-2006, quash the assessment order dated 17.07.2009 in so far as it relates to disallowance of the claim of deduction under Section.3-B(2)(d) of the Tamil Nadu General Sales Tax Act, 1959.

(in both W.Ps.)

For Petitioner : Mr.P.Radhakrishnan
For Respondents : Mr.S.Dhayalan, Government Advocate.

* * *

COMMON ORDER

The petitioner is a dealer registered with the Deputy Commercial Tax Officer, Palakarai – I Assessment Circle, Trichy/first respondent herein. The petitioner is engaged in civil construction. The assessment years pertain to 2004-2005 and 2005-2006. The petitioner claims that when they were executing their project work, they had engaged the service of one M/s.Thasami Builders (P) Ltd., Coimbatore. The case of the petitioner is that as per Section 3-B(2)(d) of Tamil Nadu General Sales Tax Act, 1959, they are entitled to deduct the amount paid to the said contractors. But then, that is subject to certain terms. The said contractor must be a registered dealer and they must have reflected the transactions with the petitioner in their returns and also paid the tax thereon. Only if these conditions set out in the Act are fulfilled, deduction can be made by the petitioner herein. Claiming that all the statutory formalities have been fulfilled, the petitioner filed their return. Thereafter, the petitioner received pre-revision notice dated 30.03.2007 from the first respondent. The petitioner offered their explanation and also produced two certificates from the Commercial Tax Officer, Trichy Road Circle, Coimbatore. But the certificates produced by the petitioner, according to the first respondent, were not sufficient. Therefore, the first respondent wrote a letter bearing No.TNGST 3521406/04-05 dated 06.11.2007 calling upon the Commercial Tax Officer, Trichy Road Circle, Coimbatore, to verify the statement made by the petitioner herein. It appears that no response was received from the second respondent herein. Therefore, the impugned orders dated 17.07.2009 came to be passed. They are assailed in these writ petitions.

2. Heard the learned counsel on either side.

3. Mrs.Vijaya Baskaran, the present Commercial Tax Officer, Palakarai-I Assessment Circle, Trichy, is present through video conferencing and assisted the Court. The assessment officer made a categorical statement that the certificate produced by the petitioner was utterly inadequate and there is nothing on record to show that the requirements set out in the statutory provision were actually fulfilled in this case. She would further point out that the burden of proof is obviously with the petitioner and it is for the petitioner to discharge the same. The learned Government Advocate submitted that the orders impugned in these writ petitions do not call for any interference.

4. Though there is considerable force in the stand taken by the respondents that the burden of proof lies only on the petitioner, I am of the view that the matter deserves to be remitted to the file of the first respondent to pass orders afresh in accordance with law. I am constrained to take this view because the first respondent having addressed the communication to the Commercial Tax Officer, Trichy Road Circle, Coimbatore to furnish particulars in this regard, ought to have proceeded further and taken it to its logical conclusion. It is seen that after addressing the letter dated 06.11.2007, the first respondent has chosen to confirm the proposal made in the show cause notice and passed the impugned order dated 17.07.2009. That apart, as rightly pointed out by the learned counsel appearing for the petitioner, no personal hearing was afforded to the petitioner. The officer who passed the impugned orders did not issue any hearing notice to the petitioner in person. It is well settled that before passing final order, the adjudicating authority ought to have given personal hearing to the assessee. In this case, this requirement was not complied with.

5. Therefore, on this ground, the orders impugned in these writ petitions are quashed. The matter is remitted to the file of the Deputy Commercial Tax Officer, Palakarai-I Assessment Circle, Trichy. The Commercial Tax Officer, Coimbatore is directed to respond to the communication bearing No.TNGST 3521406/04-05 dated 06.11.2007 sent by the first respondent seeking particulars in this regard. This will be done by the second respondent within a period of three weeks from the date of receipt of a copy of this order. Thereafter, the first respondent/Deputy Commercial Tax Officer, Palakarai-I Assessment Circle, Trichy, will give personal hearing to the petitioner herein and pass orders afresh in accordance with law.

6. These writ petitions are allowed on these terms. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

// True Copy //

/ /2021
Sub Assistant Registrar(CS)

PMU

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 Deputy Commercial Tax Officer,
   Palakarai – I Assessment Circle,
   Trichy.

2. The Commercial Tax Officer,
   Trichy Road Circle,
   Coimbatore.

+1 CC to M/s.P.RADHAKRISHNAN, Advocate (SR-6405[F] dated 22/02/2021)

+1 CC to M/s.SPL GP (SR-6700[F] dated 23/02/2021)

W.P.(MD)Nos.9262 & 9263 of 2009
19.02.2021

KUN(CO)
TR(26.02.2021) 4P 5C