BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) No.1566 of 2021
and
W.M.P(MD)Nos.1331 and 1332 of 2021

Tvl.Three Star Maligai,
Represented by its Proprietor,
S.Nizamudeen ... 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) – III,
Dindigul – III Assessment Circle,
Commercial Taxes Office,
Sub-Collector Office Road,
Dindigul- 624 001. ...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records pertaining to the impugned proceedings of the second respondent in TIN.33475241325/2014 - 15, dated 30.05.2019 and quash the same.

For Petitioner : Mr.R.Veeramanikandan
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

This Writ Petition has been filed by the petitioner to quash the impugned order of the second respondent dated 30.05.2019 passed in TIN.33475241325/2014-15.

2.The brief facts of the case are as follows:

The petitioner is the Proprietor of a Concern in the name and style of M/s.Three Star Maligai at Dindigul and the said Concern, is registered on the file of the second respondent in TIN33475241325. During the year 2014-2015, the second respondent passed an original-cum-self assessment order on 31.10.2015 by accepting the returns submitted by the petitioner under Section 22(2) of the Tamil Nadu Value Added Tax Act. While so, the second respondent issued summons in Form PP dated 28.09.2018, 19.11.2018 and 06.12.2018, to produce the accounts for verification. Since the petitioner's son was in serious health condition, at that time, the petitioner was not able to produce the accounts before the second respondent for verification. The petitioner has also produced the death certificate of his son to explain the reason for non-production of his accounts before the second respondent at the relevant point of time. However, the second respondent issued a pre-revision notice dated 29.04.2019 and thereafter, the impugned order has been passed on 31.05.2019 and subsequently, based on the impugned order, demand notice has also been issued by the second respondent on 04.11.2019. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that since the son of the petitioner was in serious health condition, he could not produce the accounts for verification. He would further submit that as per Section 27 of the Tamil Nadu Value Added Tax Act, 2006, reasonable opportunity should be given to the petitioner to explain his case and therefore, the impugned order is to be set aside.

4. In support of his submission, the learned counsel for the petitioner would rely on the common judgment of a Division Bench of this Court in **G.V.Cotton Mills (P) Ltd., vs. the Assistant Commissioner(CT), Coimbatore (W.A.Nos.234 to 240 of 2015).** The relevant portion of the said judgment is extracted hereunder:

> *"DENIAL OF PERSONAL HEARING:*
>
> *10. .... In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."*

5. Per contra, the learned Special Government Pleader would submit that opportunities were given to the petitioner to produce his accounts for verification. But, the petitioner did not avail that opportunities and therefore, the second respondent passed the impugned order and hence, there is no illegality or infirmity in the said order.

6. Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondents and perused the materials placed before the Court.

7. Section 27 of the Tamil Nadu Value Added Tax Act, 2006, provides for reasonable opportunity, which includes the personal hearing. However, the petitioner has not been given personal hearing and therefore, considering the facts and circumstances of the case, this Court is of the considered view that the impugned order is liable to be set aside and the matter needs consideration afresh.

8. In the result, this writ petition is allowed and the impugned order passed by the second respondent dated 30.05.2019, is set aside and the matter is remanded back to the second respondent for fresh consideration after giving reasonable opportunity including the personal hearing as contemplated under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and to pass appropriate orders on merits and in accordance with law. Such exercise shall be completed by the second respondent, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PM

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) - III,
Dindigul - III Assessment Circle,
Commercial Taxes Office,
Sub-Collector Office Road,
Dindigul- 624 001.

+1 CC to M/s.SPL GP (SR-15613[F] dated 09/04/2021)

+1 CC to M/s.B.ROOBAN, Advocate (SR-15726[F] dated 09/04/2021)

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