BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 21.04.2021
CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) No.8214 of 2021
and
W.M.P(MD)No.6213 of 2021

Tvl.Sree Alagar Indane Agencies,
Rep. by its Partner:A.Rajkumar,
No.2, Nethaji Road, Thirunagar,
Madurai - 625006.
... Petitioner

Vs.

The State Tax Officer,
Thirupparankundram Assessment Circle,
Madurai.
... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the respondent in TIN No.33396232030/2015-16, dated 11.02.2021, served on the petitioner on 22.02.2021, quash the same as invalid, illegal and against the principles of natural justice and further, direct the respondent to pass order afresh after affording an opportunity to the petitioner to produce their books of accounts and file their objections against the notice dated 29.12.2020.

For Petitioner : Mr.A. Chandrasekaran
For Respondent : Mrs.J.Padmavathi Devi, Special Government Pleader

ORDER

This Writ Petition has been filed by the petitioner to quash the impugned proceedings of the respondent in TIN No.33396232030/2015-16, dated 11.02.2021, served on the petitioner on 22.02.2021, as invalid, illegal and against the principles of natural justice and further, to direct the respondent to pass orders afresh after affording an opportunity to the petitioner to produce their books of accounts and file their objections against the notice dated 29.12.2020.

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

The petitioner is an authorized agent of Indian Oil Corporation, a Government of India Enterprises and duly registered on the file of the respondent under the Tamil Nadu Value Added Tax Act, 2006 and they regularly filed their monthly returns and paid the tax due on their sales. While the matter stood thus, the assessment for the year 2015-16 was deemed to have been completed as on 31.10.2016 as per the proviso to Section 22(2) of the Act. Thereafter, the petitioner received a notice dated 13.03.2018 from the respondent for production of their accounts. Immediately, the petitioner went to the office of the respondent along with the books of accounts, but the respondent did not look into the same. Not only on one occasion, on several occasions the petitioner produced the books of accounts, however, the respondent did not look into the accounts and verify the same. However, without verifying the books of accounts of the petitioner, issued a Best of Judgment Notice dated 29.12.2020 proposing to re-determine the total and taxable turnover. Thereafter, without giving an opportunity to the petitioner to file his reply, the respondent has passed the impugned assessment order dated 11.02.2021. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner is a physically challenged person and as he was suffering from illness, he could not file his reply within time. However, no opportunity of personal hearing was given to the petitioner to explain his case. He would further state that even on merits also, the petitioner is having a very good case as the goods are exempted from levying tax under Section 30 of the TNVAT Act 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 appearing for the respondent would state that opportunities were given to the petitioner to produce his accounts for verification

and file his reply/objection. But, the petitioner did not avail that opportunities and therefore, the 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 respondent and perused the materials placed before the Court.

7. It is the specific contention of the learned counsel for the petitioner that the petitioner has gone to the office of the respondent more than one occasion with the books of accounts, but they did not verify.

8. Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006, provides for reasonable opportunity, which includes the personal hearing. Even if the petitioner has not replied or file any objection, it is the duty of the respondent to give the petitioner personal hearing by giving a notice to the petitioner fixing the date of hearing. Though the respondent has stated that the petitioner was called to produce the books of accounts, he has not produced. But, it is the specific contention of the petitioner that the petitioner has produced the books of accounts more than once, but it was not verified by the respondent. 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.

9. In the result, this writ petition is allowed and the impugned order passed by the respondent dated 11.02.2021, is set aside and the matter is remanded back to the respondent for fresh consideration after giving reasonable opportunity including the personal hearing as contemplated under Section 27(4) 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 respondent, within a period of eight weeks from the date of receipt of a copy of this order. The petitioner shall also produce the records available with them at the time of personal hearing. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note:(i) 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

The State Tax Officer,
Thirupparankundram Assessment Circle,
Madurai.

+1 CC to M/s.SPL GP (SR-17168[F] dated 22/04/2021)

W.P(MD)No.8214 of 2021
21.04.2021

ES(CO)
AS(12.05.2021) 4P 3C