BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **19.07.2021**
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD)No.12149 of 2021
and
WMP(MD)No.9566 of 2021

M/s.A.T.Arun Timber
Represented by its Proprietrix T.Hemavathi
368/1, VOC Road,
Karaikudi ... Petitioner

Vs.

The Deputy Sales tax Officer-II,
Commercial Tax Building,
Karaikudi ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the records in TIN 33855483034/2013-14 dated 24.03.2020 issued by the respondent and quash the same as illegal, arbitrary and further direct to pass an order afresh after affording opportunity of being heard to the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.P.Thilak Kumar
Govt.Advocate

O R D E R

This Writ Petition has been filed praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN 33855483034/2013-14, dated 24.03.2020, issued by the respondent and quash the same as illegal, arbitrary and further direct to pass an order afresh, after affording opportunity of being heard to the petitioner.

2. The brief facts of the case reads as follows:-

(i) The petitioner is dealer in timber holding in TIN 33855483034/2013 and was an assessee under the file of the Deputy Commercial Tax Officer (Addl.), Karaikudi and was deemed to be assessed under Section 22(2) of the erstwhile TNVAT Act for the assessment year 2013-14. On verification of the return and on the basis of certain alleged discrepancies, the Deputy Commercial Tax Officer (Additional), Karaikudi, has issued a Notice TIN 33855483034/2013-14, dated 10.12.2014. But, due to ill-health and unforeseen problem, the petitioner was not able to file a reply and therefore, the Deputy Commercial Tax Officer (Additional), Karaikudi, had confirmed the proposal vide his proceedings in TIN

33855483034/2013-14, dated 28.05.2015. Since there was some mistake apparent on the face of the record, the petitioner had repeatedly approached the Deputy Commercial Tax Officer (Addl.), Karaikudi, in person, explained the facts and requested him to rectify the same by passing a revised order and he also assured that the same will be considered.

(ii) In the meanwhile, as the Taminadu Added Tax Act, 2006 was repealed and from 01.07.2017, the Goods and Service Tax Act was introduced, the Commercial Tax Department was reorganized and the Office of the Commercial Tax Officer (Additional), Karaikudi, was changed to Deputy State Tax Officer-II, Karaikudi, the respondent herein.

(iii) As there was no response from the side of the respondent and recovery proceedings were initiated, the petitioner had later filed a detailed representation, dated 02.10.2019, under Section 84 of the TNVAT Act, requesting to rectify the error apparent on the face of the record. Further, the petitioner had once again requested the respondent to consider their explanation and drop the proposal, which was acknowledged by the respondent on 14.01.2020.

(iv) On receiving the representations, dated 02.10.2019 and the further representation dated Nil, the respondent had passed the impugned order in TIN 33855483034/2013-14, dated 24.03.2020, rejecting the representations filed under Section 84 of the TNVAT Act, by arbitrarily stating that the petitioner had not e-filed the monthly return, for the months of April and May 2013. On verification of the returns filed for October 2013 and the copy of the return now filed revealed variation and the seller sales effected by Tvl.Mahavir Trading Company (33163440642) had not been reported in their Annexure-II of the monthly returns is legally not correct and order passed without affording an opportunity is violative of principles of natural justice.

3. The learned counsel appearing for the petitioner would submit that the allegation that she had not filed Form-I return for April 2013 is not factually correct and in fact, for the month of April 2013, she had filed a manual return, which was not considered. If had been considered, there will be no variation as alleged. For the allegation that certain purchases were not reported is not correct. As far as the month of April 2013 is concerned, if the manual return is taken into consideration, there will be no variation, as alleged. Further, the entire purchases are properly accounted for in the books of account without any omission and on its sale, she had reported and paid the tax.

4. The learned counsel for the petitioner would further state that she had effected purchases of materials required for the business activities only from TIN registered dealer Tvl.mahavir Trading Company (33163440642) with due tax invoices issued by the

selling registered dealer and by paying the vat charged by the seller in his tax invoices. On the basis of such original tax invoices of the seller, she had claimed and availed the Input Tax Credit on purchases within the State to the extent of the Vat paid by him and there is no wrong claim.

5. It is his further contention that the order dated 24.03.2020, passed by the respondent without affording an opportunity of personal hearing is a clear case of violation of principles of natural justice and against the Judgment of this Court in ***SRC Projects Pvt Limited Vs. Commissioner of Commercial Taxes, Chennai*** reported in **2010 (33) VST 333 (Mad)** and the Judgment of this Court in ***M/s.G.V.Cotton Mills (P) Ltd Vs. Assistant Commissioner (CT), Avarampalayam Assessment Circle, Coimbatore*** made in ***W.A.No.234 of 2015***, dated 16.03.2018. Accordingly, the learned counsel for the petitioner prays for quashing of the order dated 24.03.2020, passed by the respondent.

6. The learned Government Advocate appearing for the respondent fairly submits that the impugned order has been passed without affording an opportunity of personal hearing to the petitioner.

7. This Court heard the submissions made by the learned counsels appearing on either side and perused the materials available on record.

8. Admittedly, there is a clear procedural violation, by which the impugned order has been passed by the respondent in TIN 33855483034/2013-14, dated 24.03.2020. Therefore, without adverting to the merits of the case, I am inclined to set aside the impugned order on the ground of violation of principles of natural justice. Accordingly, the impugned order is set aside and the matter is remanded back to the Authority to pass fresh orders, by affording an opportunity of personal hearing to the petitioner and such exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

9.The Writ Petition is ordered with the above observations. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (ADII)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

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

The Deputy Sales Tax Officer, (II)
Commercial Tax Building,
Karaikudi

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-23095[F] dated 19/07/2021)

+1 CC to M/s.SPL GP (SR-23291[F] dated 20/07/2021)

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