BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)No.2172 of 2019 and
WMP(MD) No.1733 of 2019

M/s. Quality Tiles and Floorings,
Represented by its Partner M.Sachin Kumar,
S.No.39/2, Kaliappan 2nd Bit Village,
Karuppayurani,
Sivagangai Main Road, Madurai. ..Petitioner

Vs.

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai. ..Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in TIN 33484884602/2015-16 dated 25.05.2018 passed by the respondent and to quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to pass a assessment order afresh by considering the representation dated 27.02.2018 judicially including the opportunity of being heard.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned order of the second respondent in TIN 33484884602/2015-16 dated 25.05.2018.

2. The petitioner is a dealer in granite slabs and tiles and an assessee registered with the respondent. According to the petitioner, original deemed assessment order was passed by the respondent under Section 22(2) of the TNVAT Act for the year 2015-2016. Subsequent to that, notice was issued to the petitioner on 25.01.2018, proposing to revise the assessment and to levy penalty under Section 27(3) & 27(4) of the TNVAT Act, based on certain discrepancies found in the stock. On receipt of notice, the petitioner had filed his reply dated 27.02.2018. The grievance of the petitioner is that without giving the opportunity of personal hearing, the respondent had passed the impugned order.

3.The learned counsel for the petitioner would submit that computing stock by way of trading account is a crude method and will never give any correct result as a fractional variation in adopting the profit margin in the middle of the year and appraising the value of the stock held will upset the entire results. He would further submit that the opportunity of personal hearing was not given by the respondent before passing the impugned order. He would rely upon the judgment of the Division Bench of this Court in an unreported decision in ***W.A(MD) No.234 to 240 of 2015 (G.V.Cotton Mills (P) Ltd, rep by its Managing Director Vs. The Assistant Commissioner (CT), Avarampalayam Assessment Circle, Corporation of Shopping Complex, Coimbatore, dated 16.03.2018*** in order to substantiate his contention.

4.The learned Special Government Pleader appearing for the respondent would submit the petitioner has an alternative remedy to file statutory appeal as per TNVAT Act 2006. She would further submit that the actual suppression was arrived based on detailed verification of books of accounts and physical stock available at the place of business by the Enforcement Wing Officers and the same was accepted by the dealer. The dealer has not explained the difference at the time of inspection. The stock difference in terms of trading account method has been upheld by TNGST in TCR No.538/01 dated 18.03.2002 and also upheld by the STAT (AB), Madurai in MTSA 374/2000 dated 30.10.2007, which is also confirmed by this Court in W.P(MD) No.10200/2005, dated 10.07.2007. Hence, this Writ Petition is not maintainable.

5.Heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondent.

6. The respondent objects to the maintainability of the Writ Petition on the ground that the Act provides for an effective alternate remedy and they seek for a direction upon the petitioner to avail of the alternate remedy and dismiss the Writ Petition as not maintainable. The settled legal position is that mere existence of alternate remedy would not automatically oust the jurisdiction of this Court under Article 226 of the Constitution of India. The case has to be tested on facts, which are available before the Court and decide the issue. Therefore, this Court is of the view that this Writ Petition is maintainable.

7.It is the main contention of the petitioner that without affording an opportunity of personal hearing, the respondent has passed the impugned order, in gross violation of principles of natural justice. But, in the counter affidavit, there is no whisper as to the same. It is mandatory on the part of the respondent to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner.

8.In this context, a Division Bench of this Court in an unreported decision in ***W.A(MD) No.234 to 240 of 2015 (G.V.Cotton Mills (P) Ltd, rep by its Managing Director Vs. The Assistant Commissioner (CT), Avarampalayam Assessment Circle, Corporation of Shopping Complex, Coimbatore, dated 16.03.2018,*** has held that failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny the opportunity of personal hearing and the relevant portion reads thus:-

> *"DENIAL OF PERSONAL HEARING*
>
> *10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. 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."*

9.As far as the method of computing the stock by way of trading account is concerned, it is reiterated by the learned Special Government Pleader that the stock difference in terms of trading account method has been upheld by way of various rulings and the same was confirmed by this Court. On perusal of the impugned order, it is stated that since the objections filed by the dealer were not acceptable and in the absence of stock book, the respondent is left with no other option to gauge the difference by way of trading method. This Court is of the considered opinion that if an opportunity of personal hearing is granted, the petitioner could demonstrate as to why there is a difference in stock.

10. Therefore, on the sole ground of not affording personal hearing, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned order in TIN 33484884602/2015-16 dated 25.05.2018 is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is hereby directed to make his reply cum objection, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent with all relevant records regarding stock and put forth his contentions and after hearing the petitioner, the respondent, by

considering the reply and objections, shall pass appropriate reasoned order, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the respondent shall record the same and pass orders in accordance with law.

11.The Writ Petition is allowed, on the above terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Madurai.

W.P.(MD)No.2172 of 2019 and
WMP(MD) No.1733 of 2019
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(2/2)

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