BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 16.04.2021
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P(MD) No.13130 of 2020
and
W.M.P(MD)No.11026 of 2020

Tvl.P.C.Furniture Land,
Rep. by its Proprietor,
Mr.P.C.Selvam ... Petitioner

Vs.

1.The Appellate Deputy Commissioner(ST),
Madurai (North),
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai – 625 020.

2.The State Tax Officer,
West Tower Street Circle,
(Now re-organised and transferred to Nethaji Road Assessment Circle)
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai – 625 020. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings in TIN No.33084801208/2013-14 and quash the order dated 23.04.2018 as the same is illegal and passed by grossly violating the Principles of Natural Justice and to redo the assessment afresh after providing an opportunity of personal hearing and also in view of the judicial decision rendered by this Court in the case of Tvl. Annai Stores vs. State of Tamil Nadu and two others in W.P(MD)No.14184 of 2017 dated 21.12.2018.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mrs.J.Padmavathi Devi, Special Government Pleader

ORDER

This Writ Petition has been filed by the petitioner to quash the impugned proceedings in TIN No.33084801208/2013-14 dated 23.04.2018 as the same is illegal and passed by grossly violating the Principles of Natural Justice and to redo the assessment afresh after providing an opportunity of personal hearing and also in view of the judicial decision rendered by this Court in the case of Tvl. Annai Stores vs. State of Tamil Nadu and two others in W.P(MD)No.14184 of 2017 dated 21.12.2018.

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

The petitioner is doing business in the name and style of 'P.C. Furniture Land' and the said Concern is registered on the file of the second respondent bearing TIN No.33084801208 and the petitioner is regularly filing monthly returns in Form-I under the Tamil Nadu Value Added Tax Act, 2006 and reporting the entire purchases and sales as required under the Act and paying the Tax. While so, during the assessment year 2013-14, the second respondent passed the deemed assessment order by accepting the total turnover reported through the returns as required under Section 22(2) of the TNVAT Act. Thereafter, based on the inspection conducted by the Enforcement Wing Officials of the Commercial Tax Department on 14.08.2014, the second respondent passed a revised assessment order. Against which, the petitioner filed a statutory appeal under Section 51 of the TNVAT Act and the same was partly allowed and the matter was remanded back to the second respondent. Thereafter, the second respondent issued a notice to the petitioner on 22.09.2017 and for that, the petitioner filed his reply on 28.03.2018 and also requested not to levy tax on the receipt of discount as the same is not 'turnover' as per Section 2(41) of the Act and the same is also allowable as per Rule 10(6)(C) of the Tamil Nadu Value Added Tax Rules, 2017. However, without properly appreciating the real facts, the second respondent has passed the impugned order. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that in the appeal filed by the petitioner, the First Appellate Authority, set aside the order of the Assessing Officer with regard to the disputed turnover and remanded the matter back to the second respondent for fresh disposal. However, after remand also, before passing the impugned order, no opportunity was given to the petitioner to explain his case and therefore, the impugned order is to be set aside.

4.The learned Special Government Pleader appearing for the respondents would fairly submit that personal hearing has not been given to the petitioner and she would further state that if the impugned order is set aside and the matter is remanded back to the second respondent, personal hearing would be given to the petitioner and fresh orders will be passed in accordance with law.

5. 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.

6. Section 27 of the Tamil Nadu Value Added Tax Act, 2006, provides for reasonable opportunity, which includes the personal hearing under Section 27(4) of the Act, which is mandatory. 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.

7. In the result, this writ petition is allowed and the impugned order passed by the second respondent dated 23.04.2018, 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(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 second respondent, within a period of eight weeks from the date of receipt of a copy of this order. No Costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Appellate Deputy Commissioner(ST),
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+1 CC to M/s.K.SRINIVASAN, Advocate (SR-15935[F] dated 16/04/2021)

+1 CC to M/s.SPL GP (SR-16257[F] dated 17/04/2021)

W.P(MD)No.13130 of 2020
16.04.2021

MJ(CO)
KB(10.05.2021) 3P 5C