BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)Nos.13625 & 13635 of 2020
WMP(MD) Nos.11335,11336,11343,11344 of 2020

Tvl.Sri Amman Agencies,
Represented by its Proprietrix,
G.Sudha, aged about 46 years,
W/o Ganesan,
No.9, Saraswathi Apartments,
Pudur Road,
Oddanchatram,
Dindigul District - 624 619. Petitioner in both Wps

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 (CT)(FAC),
Palani -2, Assessment Circle,
No.12, R.S.Ramalingam Street 1st Cross,
Shanmugapuram,
Palani - 624 601. Respondents in both WPs

COMMON PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order of the second respondent in TIN:33645361754/2014-15 & TIN:33645361754/2015-16, dated 16.06.2017 and quash the same and to consequently direct the second respondent to redo the assessment afresh after giving adequate opportunity.

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In both Writ Petitions)

COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders of the second respondent in TIN:33645361754/2014-15 & TIN:33645361754/2014-15, dated 16.06.2017.

2. The petitioner is the Proprietor of Sri Amman Agencies, situate in Oddanchatram, dealing in masala powder. According to the petitioner, she is prompt in filing the monthly returns under Tamilnadu Value Added Tax Act and the legitimate tax dues to the department after adjusting the Input Tax Credit. According to the petitioner, for the Assessment Year 2014-2015 and 2015-2015, the second respondent has passed the original cum self Assessment order on 31.10.2015 & 31.10.2016, accepting the returns under Section 22 (2) of the Tamilnadu Value Added Tax Act. Subsequently, the second respondent issued a notice dated 27.02.2017, alleging that some of the other end sellers have not reported the sales and proposed to reverse the corresponding input tax credit of Rs.3,41,020/- and Rs.7,62,553 and proposed to levy tax on the estimated sales value and also proposed to levy penalty under Section 27(4) of the TNVAT Act. The grievance of the petitioner is that irrespective of the petitioner's request letter dated 14.03.2017, seeking time to file reply/objection and the personal visit of the petitioner seeking to provide copies of documents, namely the web report, annexure of the other end dealer, the second respondent passed the impugned orders in TIN: 33645361754/2014-15 & TIN:33645361754/2016-16, dated 16.06.2017, without giving an opportunity of personal hearing to the petitioner.

3.The learned counsel for the petitioner would submit that the impugned orders came to be passed with total non-application of mind. He would further submit that, being the quasi-judicial authority, the second respondent is not supposed to simply rely upon the web report and passed the orders. He would submit that before levying penalty under Section 27 of the TNVAT Act, it is mandatory to provide an opportunity of personal hearing. The learned counsel would also rely upon the order passed in ***W.P.No.105 of 2016, dated 01.03.2017*** by the learned judge of this Court at Principal Seat at Madras. The learned counsel would also rely upon the judgment in the case of ***G.V.Cotton Mills (P) Ltd, in W.A.Nos.234 to 240 of 2015, dated 16.03.2018.***

4.The learned Special Government Pleader appearing for the respondents would submit that upon scrutiny of the monthly returns filed by the dealer and upon cross verification of the sales annexures of the sellers, certain discrepancies were found and hence notice dated 27.02.2017 has been issued. The time sought for by the petitioner for filing objections also been granted by the second respondent. Even after expiry of the time granted, the petitioner had not filed any objection. She would further submit that the petitioner had not sought for any documents as claimed by her. Moreover, all the information relating to the returns in the form of management information system (MIS) were made accessible to the department using intranet web domain. As per section 17(2) of TNVAT Act 2006, the burden of proof with regard to the claim of ITC lies on the dealer, who claims ITC and the petitioner failed to prove that the transactions are genuine with the help of documentary evidences. As far as the averment that personal hearing was not afforded to the petitioner, the learned Special Government Pleader would submit that since the petitioner had not requested, but the same was not offered. However, today the learned Special Government Pleader would produce the circular passed by the Government in Circular No.5 of 2021 LW10/12521/2016, dated 24.02.2021 and therefore she would fairly state that the impugned orders may be set aside and the matter may be remanded back to the authorities to pass fresh orders as per the guidelines in the circular.

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

6.Admittedly, in the present case, no personal hearing has been granted to the petitioner. Considering the submission of the learned counsel for the petitioner as well as the respondent, the impugned assessment orders passed by the second respondent in TIN:33645361754/2014-15 & TIN:33645361754/2016-16, dated 16.06.2017 are set aside and the matter is remanded back to the second respondent to pass fresh orders by following the procedure contemplated under the Government Circular No.5 of 2021 passed in LW10/12521/2016, dated 24.02.2021, issued by the first respondent and pass appropriate orders within a period of four months from the date of receipt of a copy of this order.

8.Accordingly, these Writ Petitions are disposed of with the above observations and directions. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// 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 Commissioner of Commercial Taxes,
O/o The Principal and Special Commissioner of
Commercial Taxes,
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Chennai – 600 005.

2.The Assistant Commissioner (CT)(FAC),
Palani -2, Assessment Circle,
No.12, R.S.Ramalingam Street 1st Cross,
Shanmugapuram,
Palani – 624 601.

+1 CC to M/s.B.ROOBAN, Advocate (SR-15397[F] dated 07/04/2021)

+1CC to M/s.SPL GP,SR.No.15454 dated 08/04/2021

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SR(CO)
KB(11.05.2021) 4P 5C