BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2021

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.15657, 15660 and 15667 of 2020
and
WMP(MD)Nos.13135, 13139 and 13148 of 2020

Vignesh Constructions
No.B-9/1, 2nd Cross, Extension,
Thillai Nagar,
Trichy 18,
Represented through it's Proprietor
P.Velusamy ... Petitioner in all W.Ps.

Vs.

1.The Commissioner Commercial Taxes,
Elillagam, Chepack,
Chennai – 5.

2.The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy. ... Respondents in all W.P.s

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for records pertaining to impugned order vide TIN 33303445221/2012-2013, 33303445221/2013-2014 and 33303445221/2014-2015 respectively dated 14.09.2020 and quash the same as illegal.

For Petitioner in all WPs.	:	Mr.K.Baalasundharam
For Respondents in all WPs.	:	Ms.J.Padmavathi Devi Spl.Govt.Pleader

ORDER

This Writ Petitions have been filed praying for issuance of Writ of Certiorari, to call for the records pertaining to impugned order vide TIN 33303445221/2012-2013, 33303445221/2013-2014 and 33303445221/2014-2015 respectively dated 14.09.2020 and quash the same as illegal.

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

The petitioner is the proprietor of Vignesh Construction and registered dealer under Tamil Nadu Value Added Tax Act, 2006. The petitioner was regular in submission of monthly returns after introduction of Tamil Nadu Value Added Tax Act, 2006. The petitioner received summons from the 2nd respondent, for reopening of the assessment for the year from 2010-2011 to 2014-2015. The petitioner, as directed by the 2nd respondent, submitted his objections. Without considering the petitioner's objection and without any jurisdiction, the 2nd respondent passed the impugned orders vide TIN 33303445221/2012-2013, 33303445221/2013-2014 and 33303445221/2014-2015 respectively dated 14.09.2020.

3. Mr.K.Baalasundharam, the learned counsel appearing for the petitioner would submit that the impugned order of the 2nd respondent without giving any personal hearing is violation of Principles of Natural Justice and the same is unsustainable in law. The Commissioner is empowered to select the assessment for scrutiny, as stipulated under Section 22(3) of Tamil Nadu Value Added Tax Act, 2006 and the 2nd respondent not at all empowered to select the assessment for scrutiny by himself. Further, in the impugned order, there is no escapement tax as stipulated under Section 27(1)(a) of Tamil Nadu Value Added Tax Act, 2006, as such, the impugned order is not in consonance with the aforesaid Section. It is his further submission that in a catena of decision of this Court, the assessment orders were came to be set aside and the matter was remanded back to the respondent, for passing orders afresh by giving opportunity of personal hearing to the petitioner. The learned counsel, therefore, prays for setting aside the impugned order passed by the 2nd respondent. The learned counsel invited the attention of this Court to the Division Bench Judgment 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."

4. Ms.J.Padmavathi Devi, the learned Special Government Pleader appearing for the respondents by filing counter would submit that the petitioner is an assessee on the file of the 2nd respondent, under the provisions of the Tamil Nadu Value Added Tax

Act, 2006.(in short TNVAT Act). The 2nd respondent issued summons in Form PP under TNVAT Act, for the purpose of filing all corresponding purchase and sale records, books of account etc., on 24.07.2019, but the petitioner had not submitted all the relevant documents, as required by the respondents. Subsequently, the petitioner filed their objections stating that gross loss incurred was 230%, but on verification it was found that the petitioner earned profit. Further, Section 51 of the TNVAT Act, provided revision remedy to the petitioner before the jurisdictional Appellate Deputy Commissioner (ST), Trichy and without exhausting the alternative remedy, the petitioner filed the present Writ Petition. Further, enough opportunities were given to the petitioner to produce their accounts for verification. But, the petitioner did not avail that opportunities and therefore, the second respondent passed the impugned order and hence, there is no illegality or infirmity in the said order.

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. 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 orders are liable to be set aside and the matter needs consideration afresh.

7. In the result, this writ petitions are allowed and the impugned order passed by the second respondent dated 14.09.2020, is set aside and the matter is remanded back to the second respondent for fresh consideration, after giving reasonable opportunity including the personal hearing to the petitioner, as contemplated under Section 27 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 Petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

MPK

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

1.The Commissioner Commercial Taxes,
Elillagam, Chepack,
Chennai – 5.

2.The Assistant Commissioner (ST),
Woraiyur Assessment Circle,
Trichy.

+3 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-17077 to 17079[F] dated 22/04/2021)

+1 CC to M/s.SPL GP (SR-17165[F] dated 22/04/2021)

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PK(CO)
TR(18.05.2021) 4P 7C