BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **06.09.2021**

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P[MD]Nos.15887 to 15890 of 2021
and
W.M.P.[MD]Nos.12799, 12802, 12803 & 12805 of 2021

Tvl. Rahul Agencies
Rep. by its Proprietor K.R.Kannan,
No.5/217A, Meenampatti,
Sivakasi. : Petitioner in all Writ Petitions

-Vs-

The State Tax Officer,
Sivakasi II,
Sivakasi. : Respondent in all Writ Petitions

Common Prayer: Writ Petitions filed under Article 226 of Constitution of India, to issue Writs of Certiorari, calling for the records on the file of the respondent in TIN No:33105981396/2011-12, 2012-13, 2013-14 and 2014-15 dated 29.07.2021 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondents : Mr.R.Sureshkumar
Government Advocate
[In all Writ Petitions]

COMMON ORDER

The prayer sought in these Writ Petitions are for issuance of Writs of Certiorari, calling for the records on the file of the respondent in TIN No:33105981396 for the assessment years 2011-12, 2012-13, 2013-14 and 2014-15 dated 29.07.2021 and quash the same.

2. Since the issue raised in these writ petitions is one and the same, with the consent of the learned counsel appearing for the parties, all these writ petitions were heard together and are being disposed of by this common order.

3. The petitioner is an assessee with TIN No.33105981396 under the respondent. He is a dealer in edible oils and he is an assessee on the file of the respondent, under the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as "the Act"] and the petitioner claimed to have reported their purchases and sales in their regular monthly returns and paid taxes and other amounts due thereon, after deducting Input Tax Credit (ITC), available to them as per the Act and Rules framed thereunder.

4. In respect of assessment year 2011-12 to 2014-15, returns were filed and that shall be deemed to be the completed returns as per the provisions of Section 22(2) of the Act. However, the Enforcement Wing of the respondent on 11.11.2014, conducted an inspection at the petitioner's place of business and pursuant to which, their cases were reopened and ultimately, orders of assessment were issued on 22.03.2018.

5. Challenging those orders, the petitioner had approached this court in the first round of litigation, by filing writ petitions in W.P.(MD)Nos.7933 to 7936 of 2018. The said writ petitions came to be disposed of by a short order of the Writ Court dated 04.03.2021, which reads thus:

> *"Heard the learned Counsel on either side.*
>
> *2.The orders impugned in these writ petitions are liable to be set aside because personal hearing was not given to the petitioner herein. It is accordingly quashed. These writ petitions are allowed. The matters are remitted to the file of the assessing authority to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed."*

6. Therefore, those writ petitions were allowed by the writ Court, only on the ground that personal hearing was not given to the petitioner.

7. According to the petitioner, the personal hearing includes the supply of documents which are heavily relied upon by the respondent / revenue against the petitioner in concluding the reassessment procedure. In this context, the petitioner seems to have sought for certain documents to be furnished and only in that context, the respondent / Revenue, pursuant to the order passed by the writ Court in W.P.(MD)Nos.7933 to 7936 of 2018, dated 04.03.2021, as quoted hereinabove, had issued notices on 06.07.2021, giving an opportunity of personal hearing to the petitioner for each assessment years during 2011-12 to 2014-15.

8. On receipt of those notices and in response to the same, the petitioner has given separate replies to the respondent on 12.07.2021, where the petitioner has specifically asked for the production of documents or supply of documents. However, on receipt of such reply from the petitioner assessee, when the petitioner was expecting that the documents sought for by the petitioner would be supplied to the petitioner, the respondent has sent summons dated 14.07.2021 that, on 22.03.2021, the petitioner shall appear for personal hearing. In response to the same, the petitioner again on 23.07.2021, has given a reply cum request, where he had asked for or insisted for supply of the documents which he had already asked for. However, the respondent has proceeded to pass the final order of assessment dated 29.07.2021, separately for each of the assessment years, without supplying those documents requested by the petitioner. Thereby, the petitioner felt aggrieved over the said orders of assessment dated 29.07.2021, in all these cases, have filed these writ petitions with respective prayers.

9. Heard, Mr.A.Chandrasekaran, learned counsel appearing for the petitioner, who would submit that, as against the impugned assessment orders, normally, the assessee has to go before the appellate authority. However, as an exception to the same, if the principles of natural justice is violated and for want of jurisdiction or alleged violation of statutory provisions, the assessee or aggrieved party can approach this court directly by invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, in this context, the learned counsel for the petitioner would submit that, here, in the case in hand, principles of natural justice has been violated, despite the earlier order of remand made before this Court in the first round of litigation as referred above.

10. He would further submit that, when specifically certain documents are going to be utilized against the petitioner and a specific request to that effect has been again and again made by the petitioner, the same has been brushed aside and simply admitted in the impugned order itself that, those documents have been shown to the dealers by the inspecting officer. Therefore, admittedly, those documents have not been furnished and no reason whatsoever has been given for not furnishing the documents. In this context, the learned counsel for the petitioner has relied upon a decision of this court of a Division Bench reported in ***(2006) 146 STC 25 [Mad],*** in the matter of ***Kwality Granites and Marbles Vs. The Registrar, Tamil Nadu Taxation Special Tribunal and another*** *dated* ***19.02.2004,*** where he relied upon the following findings given by the Division Bench:

> *"5.We find that the order of Special Tribunal as well as the order of the assessing officer are not sustainable as admittedly the enforcement wing has seized the 62 slips from the assessee's premises and they were in the possession of the enforcement wing. Later,\these records were transferred to the assessing authority. The enforcement wing and the assessment wing are different. The mere fact that the assessee was given the opportunity for perusing the*

D7 records by the Enforcement Wing Officer would not be sufficient compliance of the principles of natural justice by the assessing officer as the assessee requested the assessing officer to furnish the copies of the D7 records at his cost so that he could reply the pre-assessment notice after the D7 records came into the hands of the assessing officer for the purpose of making assessment. We find that the view of the assessing officer that it is not necessary for him to furnish the copies of the said documents is not sustainable as without these copies, the assessee may not be in a position to give his effective reply to the pre-assessment notice. Further, the assessing officer has relied upon those documents to arrive at the taxable turnover of the assessee. Since the petitioner was prevented from sending his effective reply to the pre-assessment notice, we hold that the order of assessment impugned in the writ petition was made in violation of the principles of natural justice and therefore it is liable to be quashed."

11. By relying upon the said decision, the learned counsel would contend that, mere showing the documents which are required to be furnished is not enough or not the sufficient compliance of the principles of natural justice by the assessing authority. Therefore, the statement given by the assessing authority in the impugned orders that the Inspection Officer has shown the documents to the dealer is not sufficient to fulfill the requirements of principles of natural justice and therefore, on that ground, the impugned orders are vitiated. Therefore, the petitioner is having every justification in approaching this Court under Article 226 of the Constitution of India, challenging the impugned orders. Therefore, he seeks indulgence of this court.

12. Per contra, Mr.R.Sureshkumar, learned Government Advocate appearing for the respondent, on instructions, would submit that, the documents which are required by the petitioner whether to be given copies to him itself is a question, in view of the provisions under Section 85 of the TNVAT Act, wherein, there has been a prohibition of disclosure of particulars produced before the authority, as strict confidentiality has to be maintained. Hence, he relies upon Section 85(1) of the TNVAT Act, which reads thus:

"85. Prohibition of disclosure of particulars produced before tax authorities.-

(1) All particulars contained in any statement made, return furnished or accounts, registers, records or documents produced under the provisions of this Act or in any evidence given or affidavit or deposition made, in the course of any proceeding under this Act or in any record of any proceeding

relating to the recovery of a demand, prepared for the purposes of this Act shall be treated as confidential and shall not be disclosed.”

13. By relying upon the said provision, the learned Government Advocate would submit that, for the purpose of perusal of the documents in question, those documents were given or shown to the petitioner / dealer and even after that has been shown to him, the petitioner cannot further seek supply of copies of the documents, which are confidential documents. Therefore, such confidentiality has to be maintained by the assessing authority, in view of Section 85(1) of the Act. Therefore, the petitioner has no right to claim the copies of the documents which are confidential one, being maintained by the assessing authority sought to be furnished to the petitioner. Instead, if those documents are shown for perusal of the petitioner dealer, that would be sufficient to meet the principles of natural justice. Therefore, in the present case, such kind of principles of natural justice since has not been violated, the petitioner cannot have any grievance that, such principle has not been followed. Therefore, on that ground, the petitioner cannot invoke the extraordinary jurisdiction of this court under Article 226 of Constitution of India, by filing the present writ petitions and if at all the petitioner has got any grievance over the orders of assessment which are impugned herein, he can prefer appeals before the appellate authority under the provisions of the Act and without exhausting such remedy, the petitioner ought not to have come before this court. Therefore, on that ground, the writ petitions are liable to be dismissed, he contended.

14. I have considered the rival submissions made by the learned Counsel for the parties and have perused the materials placed before this court.

15. It is a fact that, though the petitioner has already filed the returns as a deemed acceptance of returns, subsequently, on inspection that has been carried out in the business premises of the petitioner, further, the cases were reopened for the four assessment years as referred to above and ultimately, that ended in re-assessment orders and those assessment orders have been challenged before this Court in the first round of litigation, on the only ground of violation of principles of natural justice. The learned Judge allowed those writ petitions by order dated 04.03.2021, remanding the matter to the assessing authority for reconsideration in accordance with law.

16. When such an order of remand was received, the assessing authority normally would be expected to act upon, by following the procedures established in law in conducting and concluding the assessment procedures.

17. In this context, though notices had been given on 06.07.2021 by the Revenue to the petitioner, those notices were replied promptly by the petitioner assessee on 12.07.2021, where these issues had been raised. Nevertheless, the respondent further went ahead and issued summons on 14.07.2021, to the petitioner to appear on 23.07.2021, by way of personal hearing. In response to the same, the petitioner vide his further reply dated 23.07.2021, had requested specifically the respondent / Revenue to furnish the documents which are essential and crucial from the point of view of the petitioner, to effectively defend his case.

18. In this context, the impugned orders say that personal hearing was given to the petitioner dealer, but the dealer has not given any documentary evidence to drop the proceedings. With reference to the supply of certain documents, the Inspection Officers had shown the documents to the dealers.

19. These findings given in the impugned orders itself makes it clear that, by accepting the showing of some of the documents by the Inspection Officers to the petitioner itself is sufficient to meet the point that the documents sought for by the petitioner had been furnished to the satisfaction of the petitioner and by thus, the principles of natural justice has been followed according to the respondent.

20. However, if we look at the principles laid down by the Division Bench of this Court in ***Kwality Granites and Marbles case*** cited supra, it has been specifically held that, mere giving of opportunity to the assessee for perusing the documents would not be sufficient compliance of the principles of natural justice by the assessing officer.

21. Exactly, the same has happened in these cases, where a chance of perusal of the documents seems to have been given to the petitioner, but the copies of the same has not been furnished to the petitioner.

22. In this context, even though Section 85(1) of the TNVAT Act has been heavily relied upon by the learned Government Advocate for the respondent / Revenue, on perusal of Section 85(1) of the Act, it makes it clear that the particulars contained in any statement made, return furnished or accounts, registers, records or documents produced under the provisions of this Act or in any evidence given or affidavit or deposition made, in the course of any proceeding under this Act or in any record of any proceeding relating to the recovery of a demand, prepared for the purposes of this Act shall be treated as confidential and shall not be disclosed.

23. Insofar as this provision to maintain the confidentiality is concerned, it may be a confidential document insofar as a third party is concerned. However, if those documents are going to be utilized as against the dealer or assessee and if any adverse order is going to be passed, certainly, the petitioner / assessee will be entitled to have such document, which is a fundamental and rudimentary part of the principles of natural justice. Therefore, Section 85(1) cannot be interpreted in such a meaning as interpreted by the Revenue side. Moreover, that could be the possible interpretation in view of the judgment cited supra in ***Kwality Granites and Marbles case.***

24. If the said principle is applied to the facts of the present case, since admittedly the Revenue has not furnished the documents to the petitioner, but it has only been shown to the petitioner, certainly, this Court can safely conclude that, the degree of principles of natural justice in the expected line has not been met in this case by the action of the assessing authority. Therefore, the petitioner can have a successful challenge of these orders which are impugned herein.

25. In that view of the matter, this court is inclined to dispose of these writ petitions with the following order:

> *"the impugned orders are quashed and the matters are remitted to the respondent / assessing authority for reconsideration. While reconsidering the same, the copies of the documents sought for by the petitioner shall be furnished to the petitioner within a period of two weeks and on receipt of the same, the petitioner shall have two [2] weeks time to respond by way of written reply with supportive documents and on receipt of the reply with supportive documents, if any, the respondent / assessing authority shall provide personal hearing within two [2] weeks thereafter. After having completed the personal hearing, it is open to the respondent / assessing authority to pass final orders of assessment within four [4] weeks, thereafter."*

26. With the above directions, these writ petitions are disposed of. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

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 State Tax Officer,
Sivakasi II,
Sivakasi.

+1. CC to M/S.A.CHANDRASEKARAN Advocate SR.No.28278
+1. CC to M/S.SPL.GP SR.No.28359

W.P.(MD)Nos.15887 to 15890 of 2021
06.09.2021

_RD(3.01.2022) 8P 4C