BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)No.16617 of 2019
and
WMP(MD)No.13249 of 2019

I.Vetrivel ...Petitioner

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),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
Thirumangalam,
Madurai District - 625 706. ... Respondents

Prayer : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795041814/2009-10 dated 16.05.2019 and quash the same and to direct the second respondent to re-do the assessment after giving adequate opportunity.

For Petitioner : Mr.B.Rooban
for Mr.Rajakarthikeyan

For Respondents : Mr.S.Dayalan

ORDER

Heard the learned counsel on either side.

2.The case on hand has a chequered history. But I consciously refrain from going into those aspects. I confine myself to deciding the correctness of the impugned order.

3.The petitioner received summons dated 20.03.2019. The petitioner vide letter dated 28.03.2019 sought an adjournment.

The petitioner's request was accepted and notice dated 15.04.2019 was issued calling upon the petitioner to appear on 22.04.2019. The petitioner vide letter dated 20.04.2019 made a second request for adjournment. The petitioner in his letter has pleaded not-only ill-health but also his inability to take the assistance of his auditor. The petitioner sought 30 days time.

4.The second respondent without passing orders on the said request for adjournment, passed the impugned order dated 16.05.2019 levying demand for payment of tax to the tune of Rs.53,44,503/-. In the impugned order itself, the second respondent makes reference to the request for adjournment. It is this order that is under challenge in this writ petition. The second respondent has filed his counter affidavit opposing the writ prayer. The learned Government counsel drew my attention to Paragraph No.8 of the counter affidavit. It reads as under :

> *"8.It is respectfully submitted that the dates mentioned in para-8 of the affidavit filed by the petitioner are not proper. Moreover, the assessing authority had already given sufficient duration of time of 26 days in lieu of 30 days requested by the petitioner on 20.04.2019 as detailed below :*

Date of issue of revision notice	*15.04.2019*
Time given to the petitioner together with personal hearing	*7 days from the date of receipt of the notice.*
Date of personal hearing given in the notice	*22.04.2019*
Adjournment petition received from the petitioner	*20.04.2019*
Requested time by the petitioner	*30 days from 22.04.2019*
As per the petitioner's request the adjournment is exhausted on	*21.05.2019*
Restricted the adjournment requested by the petitioner on 20.04.2019, the assessing authority had given another notice on 26.04.2019	*12 days from the date of petition received from the petitioner* *Personal hearing on 02.05.2019*
Date of revision order passed by the assessing authority	*16.05.2019*
Duration of time given to the petitioner from his petition dated : 20.04.2019	*26 days"*

Of course, there is considerable force in the contention of the learned Government counsel that the petitioner has been dragging on the proceedings. But then, the second respondent must have passed an order rejecting the petitioner's request well before passing the impugned order. The issue is no longer res integra. A learned Judge of this Court vide order dated W.P.Nos.28374 to 28377 of 2014 in ***M/s.Global Calcium Private Limited, No.125/126 Sipcot Industrial Complex, Hosur, Represented by its Senior Manager vs. The Assistant Commissioner (Commercial Taxes), Hosur (North)***, has held as follows :

> *"5.Under normal circumstances, in case where request for adjournment is made, it is open to the authority to accept or reject the same, however, while rejecting the same, the authority should bear in mind the provisions, namely, Section 27(2) of TNVAT Act, more particularly, the proviso under the said sub-section which provides that no order shall be passed under Sub-sections (1) and (2) of Section 27 without giving the dealer a reasonable opportunity of showing cause against the said order. Therefore, even while rejecting the request, the authority should bear in mind the expression used in the proviso, namely, "reasonable opportunity". Therefore, in the instant case, the petitioner had stated that the proposal to reverse the ITC has been made without taking into consideration of adjustment of ITC towards future demands and that they wanted 30 days' time since they were collecting the details of adjustment of ITC. Therefore, the first respondent ought to have examined the issue in a more objective manner and should have taken note of the fact that opportunity to the Assessee should be a meaningful opportunity and it is not for the sake of mere satisfying or compliance of the statutory requirement. That apart, when the petitioner made a request for grant of 30 days' time, if the authority was not inclined to accept the request, then a separate order ought to have been passed prior to finalizing the assessment. Even in such a case, the Assessee should have been afforded an opportunity of personal hearing. Since all these above procedural illegalities have crept in, the impugned orders are liable to be quashed."*

5.Respectfully following the aforesaid decision, the order impugned in this writ petition is quashed and the matter is remitted to the file of the second respondent to pass orders afresh in accordance with law. The petitioner is given four weeks time to file his reply and thereafter the second respondent will personally hear the petitioner and finalise the issue. The writ petition is allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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,
Ezhilagam, Chepauk, Chennai – 600 005.

2.The Assistant Commissioner (CT),
Thirumangalam Assessment Circle,
Commercial Taxes Office,
Thirumangalam, Madurai District – 625 706.

+1 CC to SPL GP (SR-5893[F] dated 18/02/2021)

+1 CC to Mr.B.ROOBAN, Advocate (SR-6051[F] dated 19/02/2021)

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KM (11.03.2021) 4P 5C