BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.17148 of 2019

and

W.M.P.(MD)No.13673 of 2019

Tvl.Yuvaraj Fireworks Industries,
Represented by its Proprietor,
V.Raja Chandrasekaran ... 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),
West Veli Street Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ... Respondents

PRAYER: Petition 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 Assessment No.33525020962/2014-15, dated 21.01.2019 and quash the same and to direct the second respondent to re-do the assessment after giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban
for M/s. Raja Karthikeyan

For Respondents : Mr.S.Dhayalan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is a dealer registered with the respondents. The case on hand pertains to the assessment year 2014-15. The assessment of the petitioner was deemed to have been completed as on 31.10.2015 under Section 22(2) of the TNVAT Act, 2006. Subsequently, the petitioner's business premises were inspected by the Enforcement Wing Officials on 24.10.2016. Based on the inspection report as well as the discrepancies discerned from the web report, pre-revision notice dated 21.12.2017 was issued. The petitioner does not appear to have given any reply. Thereafter, the respondent passed the order dated 30.01.2018 fastening liability on the petitioner herein. Questioning the same, the petitioner filed W.P.(MD)No.7956 of 2018. The petitioner took the ground that the order was vitiated for not having granted the opportunity of personal hearing. Accepting the said contention, the order impugned in the said writ petition on 24.10.2018 was quashed and the matter was remitted to the file of the respondent to pass orders afresh in accordance with law. Thereafter, the second respondent issued a fresh pre-revision notice dated 26.11.2018. The petitioner offered his explanation. Personal hearing was also granted. Thereafter, the impugned order dated 21.01.2019 was passed directing the petitioner to pay the tax of Rs.1,15,045/- together with penalty. Challenging the same, this writ petition came to be filed.

3.In the pre-revision notice, as many as seven defects were pointed out, out of them, two pertain to mismatch. The second respondent himself passed on the circular issued by the Commissioner of Sales Tax, Chennai, deferring final adjudication of the said two issues. Defect No.1 pertains to purchase turnover omissions. The petitioner in his reply pointed out that though the details have not been set out in the returns, they have been specifically mentioned in the profit and loss account and also in the Form WW report. Though the interstate purchases were not formally shown in the ledger, in substance there was no suppression as such and there was also no evasion of tax as such. Defect Nos.2 and 3 pertain to ITC reversal on interstate sales covered by C FORMS.

4.The specific stand of the petitioner herein is that following the amendment made to Section 19(2)(V), the petitioner was entitled to benefit of the statutory amendment. It is also pointed out that following the deletion of Section 19(5)(C), the question of ITC reversal will not arise at all.

5.The petitioner's counsel places reliance on the order dated 30.08.2019, made in W.P.(MD)No.15130 of 2015 etc.,batch (Tvl.Bharath Traders Vs. the Commissioner of Commercial Taxes and another) in this regard. Yet another defect pointed out against the petitioner was that the petitioner ought to have detected 2% of the tax at source, since they had entrusted certain works to the contractor. The stand of the petitioner was that the petitioner never engaged any contractor to carry out the works on their own.

6.I had a look at the explanation given by the petitioner. The explanation is extremely detailed and deals with all the points one by one. The petitioner referred to case laws and also the statutory provisions in his explanation. Even though the petitioner has adduced materials in support of their contentions, the second respondent has very casually dealt with all the objections. The impugned order is virtually non speaking. The reason for adopting such course of action appears to be that the petitioner had given statements admitting their liability, when the Enforcement Wing Officers conducted the inspection. But it has been held time and again that the assessing authority being a quasi judicial authority ought not to go merely by the statements made during the inspection. It is well known that when an inspection is conducted by the Enforcement Wing Officials, an atmosphere will be one of fear and stress. The assessing authority is expected to consider the materials independently and decide the matter on his own.

7. In the case on hand, the second respondent seems to have been guided entirely by the enforcement wing proceedings. Since there is no independent application of mind on the part of the second respondent and since the contentions urged by the petitioner in response to the pre-revision notice have not been considered, the order impugned in this writ petition is quashed. The matter is remitted to the file of the second respondent. Since the incumbent officer would be an officer different from one who passed the impugned order, the incumbent authority will grant personal hearing and thereafter, pass orders afresh in accordance with law. The Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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),
West Veli Street Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+1 CC to M/s.SPL GP (SR-6451[F] dated 22/02/2021)

+1 CC to Mr.B.ROOBAN, Advocate (SR-6593[F] dated 23/02/2021)

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VB (26.03.2021) 4P 5C