BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)No.19229 of 2019
and
WMP(MD)No.15609 of 2019

M/s.Sri Raman Textiles,
Rep.by its Partner R.Radhakrishnan ...Petitioner

Vs.

The State Tax Officer-I,

Commercial Tax Building,

Sattur. ... Respondent

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 on the file of the respondent in TIN No.33395781756/2014-15 dated 21.08.2019 issued by the respondent and quash the same is wholly arbitrary, non speaking and violation of provisions of the TNVAT Act 2006 and direct the respondent to pass a assessment order afresh by considering the reply dated 20.08.2019 and records filed by the petitioner.

For Petitioner : Mr.S.Karunakar
For Respondents : Mr.S.Dayalan
Government Advocate

ORDER

Heard the learned counsel for the petitioner and the learned Government Advocate for the respondent.

2.The petitioner is an assessee registered with the respondent. The petitioner was assessed under Section 22(2) of the TNVAT Act, 2006 on deemed assessment basis. Subsequently, the respondent issued pre-revision notice dated 05.08.2016 in which it has been alleged that the petitioner had imported machinery worth about Rs.1,09,56,528/-. in the year 2014-15 and that the same was not reported in the returns filed by the petitioner herein. In respect of the said revision notice, the petitioner gave a detailed reply. The specific stand of the petitioner is that since the petitioner is having the turn over of more than a crore of rupees, they have to necessarily file an audit report in Form-WW. In the said audit report as well as the books of account of the petitioner, the purchase has been clearly reflected. Therefore, the stand of the petitioner is that this is not a suppression and that it was only a bonafide mistake. Even though such a strong explanation has been given by the petitioner herein, the respondent chose to brush it aside in the following terms :

To a notice issued on the dealer inviting objections, if any to the above proposals, the dealer has filed their objections by way of letter dated : 20.08.2019 therein it is contended that the imported machineries even though not reported in Form-I return due to bonafide mistake, the same is clearly accounted for in the books of accounts.

But, the department stand is purchase omission may converted to the sales suppression. Hence, the objections are over ruled and I, therefore confirm the proposed of assessment on escaped turnover.

Suppression turnover under escapement Rs. 1,31,47,834 @ 5%

The taxable turnover is assessed to tax as follows ;

Purchase suppression	: Rs. 1,31,47,834.00 @ 5%
Tax due proposed	: Rs. 6,57,392.00
Tax paid	: Rs. Nil
Balance	: **Rs.6,57,392.00**

Notice in Form 'O' will issue.

I also confirm the proposed penalty @ 150% on the revenue effect of suppressed turnover of Rs. 1,31,47,834.00 under the TNVAT Act'2006.

Penalty due	: Rs. 9,86,088.00
Penalty paid	: Rs. Nil
Balance	: **Rs.9,86,088.00**

Notice in Form 'RR' will issue.

21.08.2019

STATE TAX OFFICER
SATTUR CIRCLE-I
STATE TAX OFFICER
SATTUR-1

To
Sri Raman Textiles
Plot No. DP-15, SIDCO Industrial Estate
Sulakkarai,
Virudhunagar.

3.That apart, the petitioner was not given any personal hearing before passing the impugned order. The issue is no longer *res integra*. The Hon'ble Division Bench of the Madras High Court in the decision reported in ***[2019] 60 GSTR 418(Mad) (G.V.Cotton Mills (P) Ltd., V. The Assistant Commissioner(CT), Avarayampalayam Assessment Circle, Coimbatore***) held as follows:-

> "*Denial of personal hearing:*
>
> *10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was*

expected to post the matter for hearing by issuing notice to the assessee. 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.

11. The Supreme Court in Swami Devi Dayal Hospital and Dental College v. Union of India MANU/SC/0873/2013 : [2013] 10 Scale 608 observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision."

4.Thus, the order impugned in this writ petition suffers from twin defects. It has not dealt with the objections of the petitioner and the petitioner was not given any opportunity of personal hearing. On these two grounds, the order impugned in this writ petition is quashed. The writ petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law after hearing the petitioner. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// 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
The State Tax Officer-I,
Commercial Tax Building,
Sattur.

+1 CC to SPL GP (SR-5894[F] dated 18/02/2021)

WP(MD)No.19229 of 2019 and
WMP(MD)No.15609 of 2019
17.02.2021

VB (16.03.2021) 3P 3C