BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :27.07.2021
CORAM :
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD) No.19857 of 2020
and
W.M.P(MD)No.16542 of 2020

Tvl.Unique Distributors,
Represented by its Proprietor,
C.Krishnavel ... 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 State Tax Officer,
West Tower Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in TIN No. 33154803158 / 2013-2014 dated 10.01.2019 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mr.P.Thilak Kumar,
Government Advocate

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned proceedings of the second respondent in TIN No.33154803158/2013-2014 dated 10.01.2019 and quash the same.

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

The petitioner is the Proprietor of the business concern in the name and style of M/s.Unique Distributors and their concern is registered on the file of the second respondent holding TIN.No.33154803158 and is regularly filing the monthly returns under the Tamilnadu Value Added Tax Act and had been promptly paying the legitimate tax dues to the Department. While the matter stood thus, for the assessment year 2013-14, the second respondent has passed the original cum self assessment order on 31.10.2014 by accepting the returns under Section 22(2) of the Tamil Nadu Value Added Tax Act. Thereafter, based on the audit conducted by the Enforcement Wing Officials on 26.03.2015, a notice was issued on 31.03.2017 alleging that the petitioner had suppressed the sales and therefore, proposed to levy penalty under Section 27(3)(4) of the TNVAT Act. Since the petitioner had denied the allegations, after a lapse of nine months, the second respondent had issued the notice dated 03.01.2018 with the same set of allegations and proposals. Again the petitioner had produced the documents before the second respondent. However, once again, the second respondent issued a notice dated 07.10.2018 alleging that the documents produced are not suffice to disprove the allegations. Thereafter, the petitioner approached the second respondent and requested him to provide copies of the alleged web reports and to provide him an opportunity of personal hearing. However, to the shock and surprise of the petitioner, the second respondent has passed the impugned order dated 10.01.2019. Hence, this writ petition.

3. The learned counsel appearing for the petitioner would submit that before passing the impugned order, no opportunity of personal hearing was given to the petitioner to explain his case and therefore, the impugned order is to be set aside.

4.The learned Government Advocate appearing for the respondents would fairly submit that personal hearing has not been given to the petitioner and he would further state that if the impugned order is set aside and the matter is remanded back to the second respondent, personal hearing would be given to the petitioner and fresh orders will be passed in accordance with law.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials placed before the Court.

6. Admittedly, the petitioner has sought for the alleged web reports and to provide him opportunity of personal hearing. However, the impugned order has been passed without affording an opportunity of personal hearing and therefore, considering the submissions made by the learned counsel for the petitioner as well as the respondents, the impugned order passed by the second respondent in TIN.No.33154803158/2013-14 dated 10.01.2019 is set aside and the matter is remanded back to the authorities to pass fresh orders after giving reasonable opportunity including personal hearing as contemplated under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006, and to pass appropriate orders on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order.

7. The Writ Petition is allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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2.The State Tax Officer,
West Tower Street Assessment Circle,
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Dr.Thangaraj Salai,
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+1 CC to M/s.B.ROOBAN, Advocate (SR-23941[F] dated 27/07/2021)

+1 CC to M/s.SPL GP (SR-24191[F] dated 28/07/2021)

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SS-II(CO)
KB(11.08.2021) 3P 5C