IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2022

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THE HONOURABLE **DR. JUSTICE ANITA SUMANTH**

W.P.No.17706 of 2022
and WMP.No.16990 of 2022

Tvl. Bombay Electronics,
represented by its Partner
Mr.Jagdish Bajaj ...Petitioner

Vs.

The Commercial Tax Officer,
Chepauk Assessment Circle,
PAPJM Annexe Building, 1st Floor,
No.1, Greams Road,
Chennai – 600 006. ...Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, calling for the records on the files of the Respondent herein in TIN:33310660297/2015-16 dated 22.04.2021 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.S.Kanmani Annamalai

For Respondent : Mr.C.Harsha Raj
Additional Government Pleader

ORDER

Mr.C.Harsha Raj, learned Additional Government Pleader accepts notice for the respondent and is armed with instructions to proceed with the matter even at this juncture. Hence, by consent expressed by both learned counsel for the petitioner and the learned Additional Government Pleader waiving the necessity for counter on the basis of the facts and circumstances involved in the matter, final orders are passed in this Writ Petition even at the stage of admission.

2. The challenge is to order dated 22.04.2021 passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'.). The petitioner has raised two effective grounds: Firstly and on merits, he submits as follows:

(i) Notices dated 15.04.2019 and 06.05.2019 were received from the Commercial Taxes Department proposing to assess the turnover, amounting to Rs.35,98,320/- as well as levying penalty under Section 27(3) of the Act.

(ii) There was a mismatch between the turnover reported by the petitioner and that contained in the proposal of the Assessing Officer relating to the turnover disclosed by the selling dealer.

(iii) The difference arose on account of a specific sale invoice bearing No.063 dated 05.12.2015 that is alleged to have accompanied a consignment that was transported and that had been seized during movement.

(iv) A mismatch had been noted between the number of DVD players, as per invoice, being 870 pieces and the actual number of pieces carried in the lorry, being 1880 pieces.

(v) The difference in turnover between Rs.16,35,600/- and Rs.4,47,180/- relating to the numbers as per invoice and as per actual consignment was proposed to be brought to tax.

(vi) Replies had been filed by the petitioner wherein it denied the transaction outright.

(vii) The impugned order has come to be passed thereafter taking note of the replies filed but the petitioner would contend that its submissions have not really been taken into account. The invoice, which is the only evidence used against it, merely contains its name and address and there is no TIN number mentioned therein. Thus, on merits, it is the petitioner's case that its name and address had been misused and it had no nexus whatsoever with the transaction.

3. Secondly, on the affording of sufficient opportunity, admittedly, the petitioner has not been heard. Though notice dated 30.10.2019 granted the petitioner time to file objections as well as fixed personal hearing on 14.11.2019 at 11.00 a.m., the petitioner had filed a response on 12.11.2019, wherein they had specifically sought personal hearing. Admittedly, the petitioner did not appear on 14.11.2019. The impugned order has come to be passed on

22.04.2021 more than 16 months after the reply of the petitioner was filed, wherein the officer states that as personal hearing had been granted, but not availed, there was no necessity to grant any further opportunity.

4. On the question of principles of natural justice, the manner in which the officer has rejected the request for personal hearing does not impress. The officer states at paragraph 4 as follows:

> *'4. Further, they have requested to afford personal hearing for explaining the turnover of Rs.4,47,180.00. They had already been afforded the personal hearing, which they have not utilized. Further, the amount of Rs.4,47,180.00 is pertaining to the invoice value and not actually consigned. This does not require any further personal hearing to explain.'*

5. Since the petitioner has, admittedly, filed its objections on 12.11.2019 and has specifically sought an opportunity of personal hearing, it was incumbent upon the authority to have afforded a personal hearing in the matter. The mere fact that she had offered personal hearing at the original instance, though unavailed would not exonerate the Department from violation of principles of natural justice.

6. Moreover, the conclusion of the authority to the effect that the petitioner *'does not require any further personal hearing to explain'* is unacceptable and again trammels into the entitlement of the petitioner for a fair hearing.

7. On the merits of the matter as well, I am of the considered view that

the transaction should be looked into in depth and the assessee afforded opportunity to produce materials in support of its contention that it is unconnected with the consignment.

8. That apart, burden rests upon the Department as well to establish that the invoice and the contents in the vehicle relate to the petitioner. For this purpose, it is necessary to bring on record more material apart from mere reference to the name and address of the petitioner.

9. For the aforesaid reasons, the impugned order of assessment dated 22.04.2021 is set aside. The petitioner shall appear before the Assessing Authority on 22.07.2022 at 10.30. a.m. without expecting any further notice in this regard, along with written submissions and supporting documents, if any.

10. Upon consideration of the materials, if any, filed, submissions made orally and in writing, if any, orders of assessment shall be passed de novo by the authority within a period of four (4) weeks from date of personal hearing, bearing in mind the observations set out above. Since the issue relates to one of mismatch, the contents of Circular No.5 of 2021 dated 24.02.2021 and the procedure set out thereunder must be scrupulously adhered to.

DR.ANITA SUMANTH,J.

11. This Writ Petition stands allowed. No costs. Connected Miscellaneous Petition is closed.

13.07.2022

sl
Index : Yes/No
Speaking Order/Non speaking Order

To

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