BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.1612 of 2020
and
W.M.P(MD).No.1328 of 2020

Tvl.Kani Industrial Works,
Represented by its Karta: K.Thirumalaikani,
No.226-A, South Madurai Station Road,
Madurai-625 009. ... Petitioner

Vs.

1.The State of Tamil Nadu,
Represented by the
Secretary to the Government,
Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-5.

3.The Assistant Commissioner (CT),
Kamarajar Salai Circle,
Madurai-20. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records on the file of the 3rd Respondent in TIN No.33984820598/2008-09, dated 04.11.2019 and quash the same as illegal, against the Principles of Natural Justice and against the provisions of 19 of the Tamil Nadu Value Added Tax Act, 2006 as substituted by Amendment Act 5 of 2015.

For Petitioner : Mr.A.Chandrasekaran
For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 04.11.2019, wherein, the Petitioner was required to reverse Input Tax Credit by invoking Section 19(5)(C) of the Tamil Nadu Value Added Tax Act.

2. The challenge is limited in the present petition on the premise that the impugned order has been passed without setting out any reasons and without affording personal hearing to the Petitioner, though a specific request for personal hearing was made by the Petitioner in that regard.

3. A perusal of the impugned order shows that the order has been passed in non-gross application of mind. The relevant portion of the impugned order is extracted below:

> *"A notice was issued to the dealer on 25.01.2017, 22.01.2018 and 25.03.2019. The dealer have filed a reply on 15.04.2019. The dealer's reply is verified very carefully along with connected records. The dealer's reply is not acceptable. Hence, I therefore determined the reversal of ITC and penalty as detailed below:-*

Reversal of I.T.C. $= \frac{13,01,206 \times 1,05,97,529}{3,04,03,052}$ *=Rs.4,53,559/-*

Reversal of I.T.C	*: Rs.4,53,559/-*
Paid	*: Rs. Nil*
Balance	*: Rs.4,53,559/-*

A Notice in form 'O' is issued.

Penalty U/S 27(4)(ii)

Penalty levied @ 100% U/S 27(4)(ii) under TNVAT Act 2006.

Penalty due	*: Rs.4,53,559/-*
Paid	*:Rs. Nil*
Balance	*: Rs.4,53,559/-*

A Notice in form 'RR' is issued."

4. The Petitioner had submitted his objection to invoke Section 19(5)(C) of the Tamil Nadu Value Added Tax Act vide objection, dated 11.04.2019 which runs to more than five pages, wherein, reliance was sought to be placed on atleast five judgments, none of which has been referred in the impugned order while confirming the proposals, while also requesting an opportunity of personal hearing.

5. In view of the same, this Court finds that the impugned order, dated 04.11.2019 is liable to be set aside for being a non-speaking order, non-consideration of the objection and not considering the Petitioner's request for personal hearing before passing the order. The above infirmities in the

decision making process vitiates the impugned order. Hence, the impugned order, dated 04.11.2019 is set aside with liberty to the Respondents to re-do the assessment after affording an opportunity of personal hearing to the Petitioner.

6. With the above observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

11.10.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The Secretary to the Government,
Fort St.George, Chennai-9.

2.The Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-5.

3.The Assistant Commissioner (CT),
Kamarajar Salai Circle,
Madurai-20.

MOHAMMED SHAFFIQ, J.

sn

W.P(MD).No.1612 of 2020

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