BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2022

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THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P(MD).No.13191 of 2021
and
W.M.P(MD).No.10203 of 2021

Tvl.Vanitha Fireworks Industries,
Represented by its Partner,
K.Sasibalan,
3-AA, Maruthupandiar Mettu Street,
Sivakasi. ... Petitioner

Vs.

The Assistant Commissioner (ST)-III,
Commercial Tax Building,
Sivakasi. ...Respondent

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 in TIN 33416021917/2017-18, dated 05.07.2021 issued by the Respondent and quash the same as arbitrary, illegal and against the Principles of natural justice.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.M.Prakash
Additional Government Pleader

ORDER

This writ petition is filed challenging the impugned order, dated 05.07.2021 on the limited ground that the impugned order has been passed without even dealing with the Petitioner's objections, dated 09.11.2020.

2. It is submitted that the notice was issued on 04.03.2021 proposing to reverse the Input Tax Credit and also proposing to levy penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act 2006. The Petitioner submitted his objections, dated 09.11.2020, to be proposed to reverse Input Tax Credit and submissions were made with regard to the proposed levy of penalty. However, the impugned order, dated 05.07.2021 has been passed merely recording the following:

> "*As per reference-1, The notice was issued for wrongly claimed ITC under Section 19(7)(b) of TNVAT Act-2006 and the dealer reply submitted as per reference-2. The Dealer reply was not accepted and again notice issued as per reference-3.*"

3.It is submitted by the learned counsel for the Petitioner that no reasons are set forth in the assessment order and thus, the impugned order is bad for violation of principles of natural justice. It is now trite law that a non-speaking order/ order without reasons has been consistently held to vitiate the proceedings as having been made in violation of principles of natural justice. In this regard, it may be relevant to refer to the judgment in the case of ***Kranti Associates (P) Ltd. v. Masood Ahmed Khan, (2010) 9 SCC 496 : (2010) 3 SCC (Civ) 852 : 2010 SCC OnLine SC 987,*** Wherein, the need for giving reasons was explained as under:

> "***47.****Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
>
> *(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
>
> *(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.*
>
> *(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.*
>
> *(g) Reasons facilitate the process of judicial review by superior courts.*
>
> *(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.*

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor [(1987) 100 Harvard Law Review 731-37] .)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain [(1994) 19 EHRR 553] EHRR, at 562 para 29 and Anya v. University of Oxford [2001 EWCA Civ 405 (CA)] , wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

4. In view of the same, this Court finds merits in the submission of the learned counsel for the Petitioner and thus, the impugned order, dated 05.07.2021 is set aside with liberty to the Respondents to redo the assessment after affording reasonable opportunity to the Petitioner and thereafter, pass speaking order within a period of four months from the date of receipt of copy of this order.

5. The writ petition stands disposed of on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

24.11.2022

Index : Yes / No
Internet : Yes/ No
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To
The Assistant Commissioner (ST)-III,
Commercial Tax Building,
Sivakasi.

MOHAMMED SHAFFIQ, J.

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