BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.A.(MD) No.1362 of 2023
and
C.M.P.(MD) No.10340 of 2023

M/s.Chandan Paper Stores
rep.by its Proprietor Tikam Chand ... Appellant

-vs-

1.The Commissioner of Commercial Taxes
O/o.The Principal and Special
Commissioner of Commercial Taxes
Ezhilagam, Chepauk
Chennai-600 005

2.The Commercial Tax Officer
Tirunelveli Town Assessment Circle
Commercial Tax Building Complex
A.R.Line Road
Palayamkottai
Tirunelveli District-627 002 ... Respondents

Writ Appeal filed under Clause 15 of Letters Patent to set aside the order, dated 21.02.2022, passed in W.P.(MD) No.3728 of 2022, on the file of this Court.

For Appellant : Mr.R.Veeramanikandan

For Respondents : Mr.D.Sachi Kumar
Additional Government Pleader

J U D G M E N T

[Judgment of the Court was made by S.S.SUNDAR, J.]

This writ appeal is directed against the order of the learned Single Judge, dated 21.02.2022, passed in W.P.(MD) No.3728 of 2022.

2. The brief facts, which are necessary for the disposal of this writ appeal, are as follows:

> **2.1.** The appellant is the proprietor of a business concern, by name, Chandan Paper Stores, in Tirunelveli. He is a registered dealer of selling paper and other stationery items. Since the annual turnover is below Rs.50 Lakhs, the appellant sought for compounding assessment under Section 3(4) of the Tamil Nadu Value Added Tax Act, 2006. However, the second

respondent / Assessing Authority passed an assessment order dated 30.10.2014 determining the taxable turnover and penalty. The appellant challenged the same by filing separate writ petitions in W.P.(MD) Nos.19818, 19819, 19820 & 19821 of 2014 for different assessment years.

2.2. This Court, by order dated 15.07.2019, allowed the writ petitions, on the short ground that the assessment orders passed by the Assessing Authority are in violation of the principles of natural justice. However, this Court remitted the matter back to the file of the Assessing Authority with a direction to the appellant to appear before the Assessing Authority on a particular date for personal hearing. The Assessing Authority was also directed to pass fresh orders, after assessing *de nova*, within a period of four weeks from the date of conclusion of personal hearing.

2.3. Pursuant to the order passed by this Court, the Assessing Authority issued summons, on 21.06.2021, in terms of Rule 16(1) of the Tamil Nadu Value Added Tax Rules, 2007, requiring the appellant to appear before them on 13.07.2021 at 11 O' Clock. The appellant received the summons on 23.06.2021 and sent a representation to the second respondent on 10.07.2021 to adjourn the hearing to a date in the next month as he has to collect records from his accountant. In the said representation, the appellant has mentioned that he needs fifteen days time to collect the records from his accountant. However, without considering the said request made by the appellant, the Assessing Authority, by order dated 27.07.2021, determined the taxable turnover as Rs.1,02,98,006/- and fixed the tax due as Rs.4,11,920/- with penalty of Rs.6,17,880/-.

2.4. Challenging the same, the appellant filed a writ petition in W.P.(MD) No.3278 of 2022. The learned Single Judge, by order dated 21.02.2022, disposed of the said writ petition with liberty to the appellant to file a statutory appeal before the Appellate Commissioner, as he is having an effective alternative appeal remedy, within a period of thirty days from the date of receipt of a copy of the order. Challenging the same, the appellant is before this Court.

3. Learned counsel for the appellant submitted that the second respondent, who is not inclined to give time beyond fifteen days, ought to have informed the appellant about the rejection of the request made by the appellant. Passing an order on 27.07.2021 by assuming that the appellant who wanted only fifteen days time, has no defence, according to the learned counsel for the appellant, is inappropriate and the said assessment order is again suffers from irregularity and it is again vitiated for violation of principles of natural justice.

4. Learned counsel for the appellant further contended that the appellant, who is entitled to a fair opportunity, will have to take a risk before the Appellate Authority, as he has not produced any materials, which are required to substantiate his case before the Assessing Authority.

5. The learned Single Judge found that the appellant is having an effective alternative remedy of approaching the Appellate Commissioner.

Further, the learned Single Judge observed that there is no merit in the writ petition as the appellant failed to appear before the Assessing Authority within the fifteen days time, which he requested. Further, the learned Single Judge found that the appellant has not taken steps to challenge the order of the Assessing Authority within the time permissible for filing appeal before the Appellate Commissioner or before this Court immediately after the assessment order was passed.

6. However, the fact remains that the Assessing Authority passed the assessment order without hearing the appellant. It may be true that the appellant also to be blamed for his failure to submit the documents and appear before the Assessing Authority within fifteen days. The appellant, in his representation, dated 10.07.2021, has requested time for collection of evidence and to submit documents. As per the earlier direction of this Court, the appellant was asked to appear before the Assessing Authority on a particular date. The appellant, while submitting his explanation seeking fifteen days time, may not expect the Assessing Authority to pass an order on the expiry of the fifteen days time as mentioned in the communication dated 10.07.2021. It is for the Assessing Authority to fix a date for hearing. If the communication is received immediately on the expiry of fifteen days time asked for by the appellant, he would only expect the second respondent to fix a date for hearing, so that he would be in a position to appear before the Assessing Authority and produce the documents to substantiate his case. Only in the said circumstances, the assessment order impugned in the writ petition cannot be sustained merely because it was passed fifteen days after the expiry of the time asked for by the appellant. The appellant cannot be punished for expecting a notice fixing a date for hearing. Hence, this Court finds that the assessment order impugned in the writ petition is in violation of the principles of natural justice and finds merits in the writ petition.

7. In the result,

(i) This writ appeal is allowed.

(ii) The order dated 21.02.2022, passed by the learned Single Judge in W.P.(MD) No.3278 of 2022 is set aside.

(iii) As a consequence, the assessment order dated 27.07.2021, passed by the second respondent, is set aside.

(iv) However, it is open to the Assessing Authority / second respondent to pass fresh assessment order, after giving one more opportunity to the appellant.

(v) The second respondent is directed to fix a date of hearing and on that date, without asking for any extension of time, the appellant shall appear before the second respondent and putforth his submissions as well as the documents whatever in his possession

(vi) The second respondent, after holding an enquiry, pass orders on merits and in accordance with law, within a period of four weeks from the date of first hearing.

(vii) No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] **[D.B.C., J.]**

24.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

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