BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :19.03.2015

CORAM:
THE HONOURABLE MR.JUSTICE B.RAJENDRAN
W.P(MD)Nos.3862 and 3863 2015
and
M.P.(MD).Nos.1 and 1 of 2015

Tvl.Bhima Jewellery
represented by its
Managing Partner,
Sudhi Kapoor,
No.137, West Masi Street,
Madurai. ... Petitioner in both cases

Vs.

The Assistant Commissioner(CT),
South Avani Moola Street Circle,
Madurai-20. ... Respondent in both cases

PRAYER in W.P.(MD)No.3862 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent herein in TIN No. 33134842551/2011-12, dated 27.01.2015 and quash the same as illegal, invalid and against the principles of natural justice.

PRAYER in W.P.(MD)No.3863 of 2015: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records on the file of the respondent herein in TIN No. 33134842551/2010-11, dated 13.02.2015 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner
in both petitions : Mr.A.Chandrasekaran

For Respondent
in both petitions : Mr.R.Karthikeyan
Additional Government Pleader

COMMON ORDER

The only ground raised in these writ petitions by the petitioner is that before passing the impugned orders, the petitioner has not been given a personal hearing.

2. Heard the learned Counsel for the petitioner and the learned Additional Government Pleader. By consent, both the writ petitions are taken up for disposal.

3. The learned Counsel for the petitioner submitted that in fact the major dispute in respect of transaction has been accepted by the Department on the explanation and only a small amount has not been accepted. He would further submit that even to that small amount, the petitioner has produced "C" Form and if personal hearing has been given to them, they have taken an opportunity to clarify the entire thing. He would also submit that even without a proposal forwarded, the order has been passed which was not shown in the show cause notice.

4. The learned Counsel for the petitioner would further add that as per the decision of the Division Bench of this Court in ***SRC Projects Private Limited, represented by its Chief Executive Officer, Salem Vs. Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai*** reported in ***2010 33 VST 333,*** the principle is a mandatory one, which has not been followed in the impugned order, which violates the principles of natural justice.

5. The learned Counsel for the petitioner would further submit that the petitioner is willing to pay 15% of the tax demanded to show his *bonafide,* so that when the opportunity is given, they will explain in detail.

6. The learned Additional Government Pleader would submit that show cause notice was given and the petitioners have given their explanation and the explanation was considered in detail and thereafter only the order was passed.

7. Taking into consideration the facts that the proposals forwarded was not shown in the show cause notice and thereafter, the order was passed without giving an opportunity of personal hearing, the impugned order is *per se illegal.* Subsequently, even though the explanation is given and it has been considered, personal hearing has not been given to the petitioner, which violates the principle of natural justice as contemplated in the decision of the Division Bench of this Court in ***SRC Projects Private Limited, represented by its Chief Executive Officer, Salem Vs. Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai*** reported in ***2010 33 VST 333***. In this case, "C" form has also been produced and apart from that, the petitioner is also agreed to pay 15% of the tax demanded.

8. In view of the above facts and circumstances of the case, the impugned order is set aside and the matter is remitted back to the Authority concerned. The petitioner is directed to pay 15% of

tax demanded, as admitted by him, within a period of four weeks, from the date of receipt of a copy of this order, failing which the petitioner is not entitled to the benefit under the Tamil Nadu Value Added Tax Act. On such payment, the Authority concerned shall give a date to the petitioner for a personal hearing and on that hearing date, the petitioner shall appear before the Authority concerned and after hearing the petitioner, the Authority concerned, shall pass appropriate orders in accordance with law, considering the petitioner's objection.

9. With the above observations, the Writ Petitions are disposed of. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner(CT),
South Avani Moola Street Circle,
Madurai-20.

+1cc to Mr.A.Chandrasekaran,Advocate Sr.No. 13285
+1cc to Spl.Government Pleader Sr.No.13740
ssl
AA/01.04.2015/3p- 4c/

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and
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