IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :: 21.6.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.3215, 3216 of 2012

&

MP.No.1 & 1 of 2012

M/S.HANSUM INDIA ELECTRONICS P Ltd.
REP. BY ITS DIRECTOR MR.A.S.MICHAEL
No.62B OMES ROAD KILPAUK CHENNAI-10. ... petitioners in both the Petitions

versus

THE COMMERCIAL TAX OFFICER
AYANAVARAM ASSESSMENT CIRCLE
CHENNAI-108. ... respondents in both the Petitions

W.P.No.3215/2012 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN/ 33441003072/2010-11 dated 13.01.2012 and the consequential order dated 31.01.2012 and quash the same being arbitrary unreasonable and violative of principles of natural justice.

W.P.No.3216/2012 filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records of the respondent in CST 1003580/2010-11 dated 13.01.2012 and the consequential order dated 31.01.2012 and quash the same being arbitrary unreasonable and violative of principles of natural justice.

For petitioner ... Mr.V.Sundareswaran
For respondents ... Mr.V.Hari Babu
Additional Government Pleader

COMMON ORDER

The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax, 2006, has filed these Writ Petitions challenging the order of assessment and the order rejecting the petitioner's application for rectification, filed under Section 84 of the Tamil Nadu Value Added Tax Act.

2. The petitioner is challenging the impugned orders on the ground that the same were passed in violation of principles of natural justice, without affording an opportunity of personal hearing and that it has been made with undue haste. It is not in dispute that while submitting their objections to the pre revision notice dated 22.9.2011, the petitioner specifically sought for an opportunity of personal hearing. In terms of the decision of the Hon'ble Division Bench of this Court in the case of Tvl.SRC projects Pvt. Ltd. vs. Commissioner of Commercial Taxes, Chennai and another, (2008(09)14 TNCTJ 220), when an assessee seeks for an opportunity of personal hearing, the Assessing Officer should grant the same before passing any adverse orders against him. Therefore, in the instant case, there is no dispute that the petitioner sought for personal hearing. The request was accepted by the respondent and by notice dated 29.12.2011, the respondent fixed the date of personal hearing on 12.1.2012. On 12.1.2012, the petitioner went to the office of the respondent at 11 a.m. and he was informed that the respondent is attending a meeting and would not be available for the day. The petitioner appears to have left under the bona fide impression that a fresh date of hearing would be informed to him. Therefore, the accountant of the petitioner company went to the office of the respondent on 13.1.2012 to ascertain the date. To its shock and surprise, the petitioner was served with the impugned order of assessment dated 13.1.2012. The learned counsel for the petitioner would state that the order is a pre-prepared order, and the manner in which the Assessing Officer has acted would clearly show his vindictive attitude. The petitioner has sent a telegram to the Commissioner on 13.1.2012 setting out the manner in which the impugned orders were passed, without giving a personal hearing.

3. On receipt of the impugned order of assessment, the petitioner immediately filed the application under Section 84 of the T.N. VAT Act. The said application was also rejected by order dated 31.1.2012. From the counter affidavit, it is seen that the respondent has admitted that he was not available at 11 a.m. on 12.1.2012 but has taken a stand that he had returned after the meeting, around noon. Its the contention of the respondent that the petitioner should have waited for the respondent. In any event, if the assessee had appeared in

response to the notice of personal hearing, and the officer was not available, fairness in approach would be to assign a fresh date and there could not have been such a big hurry in the matter because pre-assessment notice was issued on 22.9.2011. Therefore, there was no reason as to why the Assessing Officer should complete the assessment on the very next day.

4. In the light of the above, this Court is of the view that the petitioner should be afforded a fresh opportunity to place their objections and they should also be granted an opportunity of personal hearing.

5. Accordingly, the Writ Petitions are allowed. No costs. The impugned orders are quashed and the matter is remitted to the respondent to afford an opportunity of personal hearing to the petitioner, verify all the documents and pass a speaking order on merits and in accordance with law. Consequently miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

THE COMMERCIAL TAX OFFICER
AYANAVARAM ASSESSMENT CIRCLE
CHENNAI-108.

+1 cc to Mr.V.Sundareswaran Advocate sr.35083

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