IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 15.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.38336 of 2003

M/s Fomas India Ltd.,
Palayanoor P.O., ... Petitioner

Vs

The Commercial Tax Officer
Alwarpet Assessment Circle
Greenways Road, Chennai 28. ... Respondent

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for Writ of certiorarified mandamus to call for the records of the respondent in CST:655441/98-99 and quash the order passed therein dated 05.09.2003 as it is passed against the principles of natural justice and further direct the respondent to pass fresh order of assessment after giving reasonable opportunity and personal hearing to the petitioner.

For Petitioner : Mr.A.P.Srinivas Babu

For Respondent : Mr.S.Kanmani Annamalai
Additional Government Pleader

O R D E R

Heard Mr.A.P.Srinivas Babu, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, appearing for the respondent and with the consent of the learned counsel appearing on either side, the Writ Petition is taken up for final disposal.

2.The petitioner is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act (CST Act), challenging the order passed by the respondent dated 05.09.2003, revising the assessment under the provisions of the CST Act for the year 1998-99.

3.Though the learned counsel for the petitioner raised several grounds, the primary ground on which the impugned order has been challenged is on the ground that the petitioner was not afforded a reasonable opportunity to putforth their case and they were not granted any personal hearing.

4.The learned counsel for the petitioner pointed out that pre-revision notice in fact also binds in it the request made by the petitioner for rectification by their letter dated 27.08.2001, for rectifying the assessment order for the year 1998-99. Therefore, it is submitted that the respondent could not have issued an omnibus notice, both with regard to the prayer made by the petitioner for rectification and proposal to reasses the petitioner for the relevant year.

5.Be that as it may, the petitioner sought one month time to submit the balance 'C' Forms. Though it may be true that it is only after a period of one month, the respondent had passed the impugned order, the respondent did not intimate the petitioner as to whether the time sought for by them has been granted or not. However, the Statue mandates that when there is an increase in liability of tax or when there is an adverse order passed against the assessee, he should be heard in the matter. Therefore, on the said factual ground, the impugned order calls for interference.

6.Accordingly, the Writ Petition is allowed, the impugned order is set aside on the aforesaid ground and the matter is remanded to the respondent for fresh consideration. It is needless to mention that the respondent shall afford an opportunity to the petitioner to submit their objections and also grant personal hearing to the petitioner, before passing orders. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Rpa

To

The Commercial Tax Officer
Alwarpet Assessment Circle
Greenways Road, Chennai 28.

+1cc to Mr.A.P.Srinivas, Advocate, S.R.No.33350
+1cc to the Special Government Pleader(T), S.R.No.33326

W.P.No.38336 of 2003

NR(CO)
CA(11/07/2016)