BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.04.2018

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THE HON'BLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.7860 and 7861 of 2018
and
W.M.P.(MD)Nos.7437 and 7438 of 2018

M/s.Amirtha Distributors,
Represented by its Managing Partner Mr.K.Sivakumar,
No.94/394, II floor North Masi Street,
Madurai - 625 001. ... Petitioner in both W.P.s

-Vs-

The Assistant Commissioner (ST) (FAC),
West Tower Street Circle,
Madurai-20. ...Respondent in both W.P.s

COMMON PRAYER: Writ Petitions - filed under Article 226 of Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in TIN No.33634803476/2014-15 and TIN No.33634803476/2015-16 dated 26.03.2018, quash the same as it is in violation of the natural justice and further direct the respondent to provide all the required documents & records relying upon the reassessment so as to enable the petitioner to file effective objections for consideration on its merits by affording an opportunity for personal hearing in accordance with law.

For Petitioner	:	Mr.R.D.Ganesan
For Respondent	:	Mr.S.Dhayalan Government Advocate (in both W.Ps)

COMMON ORDER

The challenge of the writ petitioner is to the assessment orders passed by the respondent in TIN No.33634803476/2014-15 and TIN No.33634803476/2015-16 dated 26.03.2018 respectively.

2. According to the petitioner, he is a dealer in Tyres and for the assessment years 2014-15 and 2015-16, he filed the returns under the self assessment scheme. Subsequently, the Enforcement Wing Officers inspected the business place of the petitioner on 23.12.2015, during which, certain defects were pointed out by the Enforcement Wing Officers. Pursuant to their report, the tax and reversal of ITC along with penalty was formulated and forwarded to the respondent for making revision of assessment under Section 27 of the TNVAT Act. The respondent issued a revision notice on

28.11.2017, in which, it was stated that the cross verification of the buyer and seller and excess availment of ITC to the extent of Rs.10,93,813/- obtained through web were enclosed with the revision notice. Further, purchases made from RC cancelled dealers were also obtained through web and it was also enclosed along with the revision notice. However, by way of reply dated 06.12.2017, the writ petitioner has informed the respondent that no such enclosures were found and requested to supply the enclosures for making effective objections against the allegations made in the revision notice. In spite of the request made by the petitioner, no document was supplied. Ultimately, assessment orders dated 26.03.2018 were passed. While doing so, the request of the petitioner to afford an opportunity to present his case in person was also not acceded to. Aggrieved over the same, the writ petitions have been filed.

3. Heard both sides.

4. I have given my anxious consideration to the materials available before this Court.

5. From the perusal of the statement recorded by the Enforcement Wing Officers dated 23.12.2015, it could be seen that there were no enclosures. It is a general statement about the nature of dismissal and discrepancies in the maintenance of account by the dealer. The impugned order passed by the respondent also does not disclose any materials obtained by them through web or the data relied on by them in confirming the proposals by the lessees. Even though specific objections were raised by the writ petitioner, the respondent has not considered any of the objection raised and recorded reasons for overruling the same. The impugned order simply records that the objections raised by the petitioner are overruled and the proposals are confirmed.

6. A Division Bench of this Court in the case of Madras Granites (P) Ltd vs. Commercial Tax Officer reported in 146 STC 642 has held that the Quasi Judicial Authority, while exercising his quasi-judicial function for completing the assessment, is not bound by the instructions of the higher authorities. He has to independently apply his mind in taking the decision. But, in the instant case, the respondent has passed the impugned assessment orders simply based upon the report of the Enforcement Wing Officers and without providing required documents to the petitioner, to disprove the allegations. Moreover, the respondent, without recording any reason, has simply overruled the objections raised by the petitioner, which is not sustainable in law.

7. The learned counsel appearing for the petitioner would rely on the Judgment of this Court in the case of Tvl.SRC Projects Private Limited vs. the Commissioner of Commercial Taxes, in W.A.Nos.893 and 894 of 2008, dated 08.09.2008, wherein it was categorically held that an opportunity of personal hearing is mandatory before passing the revised assessment order for a dealer

to go before the authority and present his records and documents, so as to enable the dealer to disprove the allegations in such cases, which is very much essential, in compliance with the principles of natural justice. Further, when a specific request is made, it is mandatory on the part of the Quasi Judicial Authority to comply with the principles of natural justice, which has been repeatedly reiterated by way of catena of decisions.

8. The learned counsel appearing for the petitioner would rely on the judgments of this Court in the case of Sri Kumaran Trading Company vs. Deputy Commercial Tax Officer, Chennai, reported in [2017] 105 VST 306 (Mad) and in the cases of M/s.APT Leather vs. The Commercial Tax Officer, Vellore District reported in 48 GSTR 89 and M/s.Trisul Overseas vs. The Assistant Commissioner, Ranipet reported in 48 GSTR 129, etc..

9. In all these cases, the cardinal principle, which is followed by the Court is that while exercising quasi judicial powers, providing an opportunity to the dealer is held to be mandatory. Furnishing all materials relied on for revising the assessment, calling for objections, affording personal hearing for putting forward their defences and recording the reasons while overruling the objections, are very much essential. But, in the instant case, in one line, the respondent has overruled the objections without recording any reason for the same. There is no discussion about the grievance of the petitioner over non supply of documents. It is mandatory on the part of the department to supply those materials, which were relied upon and obtained through web, which falls within their exclusive domain, to the assessees. In the absence of all these, the order passed by the Quasi Judicial Authority is bad and is liable to be set aside without any reservation.

10. Accordingly, the impugned orders passed by the respondent are set aside and the matters are remanded back to the respondent for fresh consideration. Before deciding the issue, the respondent is directed to furnish all the materials relied on by him in revising the assessment and provide ample opportunity to the dealer to submit his objections and to put forward his defences in person.

11. In short, the principles of natural justice as repeatedly held by this Court, shall be strictly followed and a reasoned order shall be passed.

12. In the result, the Writ Petitions are allowed. No costs. Consequently, the Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar

To

The Assistant Commissioner (ST)(FAC),
West Tower Street Circle,
Madurai-20.

+1cc to Special Government Pleader, SR.No.61336.
+2cc to M/s.R.D.Ganesan, Advocate, SR.No.61070 & 61071.

Common Order made in
W.P.(MD)Nos.7860 and 7861 of 2018
and
W.M.P.(MD)Nos.7437 and 7438 of 2018
Dated:12.04.2018

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RAM/MMS/SAR 2/29.05.2018/4P/5C