BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **24.10.2018**

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.7956 of 2018
and
W.M.P.(MD)No.7560 of 2018

Tvl. Yuvraj Fireworks Industries,
Rep. by its proprietor
V.Raja Chandrasekaran .. Petitioner

Vs.

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

2.The Assistant Commissioner (ST),
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020. .. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS calling for the records pertaining to the impugned proceedings of the second respondent in Assessment No.33525020962/2014-15 dated 30.01.2018 and quash the same and to direct the second respondent to re-do the assessment after giving adequate opportunity to the petitioner.

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mr.D.Muruganantham,
Additional Government Pleader

*****

ORDER

This writ petition is directed against the impugned order of the second respondent, dated 30.01.2018, in and by which, revised assessment order for the assessment year 2014-15 came to be passed.

2. The petitioner before this Court – Tvl.Yuvraj Fireworks Industries is an assessee on the file of the second respondent. For the subject assessment year, the petitioner had filed their returns in time, which was also accepted and approved by the Department. While so, based on an inspection report, the

petitioner was served with a pre-revision notice dated 21.12.2017, citing some discrepancies and thereby, proposed to revise the assessment for the subject assessment year. According to the petitioner, the second respondent had not furnished the web report and other particulars, which was referred to in the pre-revision notice. Therefore, the petitioner was not able to verify the transactions and make their reply on time. In the meantime, the impugned order revising the assessment came to be passed and that too, without affording an opportunity of personal hearing to the petitioner. Hence, the present writ petition came to be filed.

3. Learned Additional Government Pleader, on the other hand, would submit that the petitioner was issued with pre-revision notice dated 21.12.2017. But, the petitioner did not respond. Hence, having left with no other option, the respondent, after recording this aspect, has proceeded with the matter and passed the impugned assessment order dated 30.01.2018. Therefore, he prays for dismissal of the present writ petition.

4. At this juncture, learned Counsel for the petitioner would submit that one of the issues raised in the pre-revision notice is with regard to mismatch. However, neither the web report nor the other relevant particulars were enclosed in the notice and therefore, they are not in a position to make their objections. Relying upon a decision of this Court reported in ***[2017] 99 VST 343 (Mad)***, in the case of ***JKM Graphics Solutions Pvt., Ltd., v. Commercial Tax Officer, Vepery Assessment Circle, Chennai, decided on 01.03.2017***, the learned Counsel for the petitioner contended that the pre-revision notices are bereft of requisite particulars, in the absence of which, proper objection could not be submitted.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. After elaborately hearing the learned Counsel on either side, this Court is of the view that the impugned order is liable to be set aside for more than one reasons.

7. Firstly, it is not in dispute that the petitioner has received the pre-revision notice, but they did not file their objections, as the same is bereft of relevant particulars. As rightly contended by the learned Counsel for the petitioner, in cases of mismatch, as per the Circular of the Commissioner of Commercial Taxes in Circular No.10 of 2015 dated 01.04.2015, the second respondent ought to have enclosed the full particulars, invoice-wise, either in printed form or CD or email. For better appreciation, clause (a) & (b) of the Circular dated 01.04.2015 are extracted thus:

> *"(a) in case of return mismatch-based notices, invoice-wise data of mismatches for each demand must be mandatorily attached to the notice either in print form or*

as a CD or send as an email; and

(b) the fact of enclosing such mismatch transaction data shall be clearly mentioned entered in the notice and acknowledgement receipt obtained."

This aspect has been elaborately discussed by this Court in the decision relied on by the learned Counsel for the petitioner in ***[2017] 99 VST 343 (Mad)*** (cited supra).

8. Secondly, even if the petitioner does not respond for the show cause notice, it is mandatory on the part of the respondent to post the matter for personal hearing. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the **Justice Ramanujam Committee**, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner. But, in the impugned order, there is no whisper as to the same.

9. In this context, a Division Bench of this Court in an unreported decision in W.A.(MD) No.234 to 240 of 2015 **(G.V.Cotton Mills (P) Ltd., Rep. by its Managing Director Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle Corporation of Shopping Complex, Coimbatore)**, dated 16.03.2018, has held that failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

"10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notice. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass order on merits. We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."

10. Therefore, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned order, dated 30.01.2018, is set aside and the matter is remitted back to the second respondent for fresh consideration.

11. The second respondent is directed to issue fresh show cause notice, calling for objections within a period of two weeks from the date of receipt of a copy of this order. Needless to say that the show cause notice, to be issued by the second respondent, has to include the necessary particulars in respect of mismatch. On receipt of the show cause notice, the petitioner shall file their detailed reply cum objections within a further period of two weeks. Thereafter, the second respondent shall fix a specific date for hearing, within a period of two weeks from the date of receipt

of a reply/representation from the petitioner and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the second respondent and put forth their contentions and after hearing the petitioner, the second respondent shall pass appropriate orders, purely on merits, within a further period of four weeks thereafter. Needless to say that if the petitioner is dragging on the proceedings, by adapting delay tactics, it is open to the second respondent to record the same and proceed further in the manner known to law.

12. This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-I)

To

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

2.The Assistant Commissioner (ST),
West Veli Street Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai – 625 020.

COPY TO

The Section Officer,
E.R. Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC To MR.B.ROOBAN, Advocate SR. NO. 91446
+1 CC TO The Special Government Pleader SR.NO.92243

W.P.(MD)No.7956 of 2018
and
W.M.P.(MD)No.7560 of 2018
24.10.2018

GK
TR/RSK/SAR-I(09.11.2018)4P 6C