BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.8262 to 8267 of 2018
and
W.M.P.(MD).No.7837 to 7842 of 2018

TVL.National Trading Corporation,
rep. by its Partner,
Thiru K.Mohammed Ibrahim
No.150, Big Bazaar Street,
Kumbakonam-I,
Thanjavur District. .. Petitioner in all WPs

Vs.

The Assistant Commissioner (CT)
Kumbakonam -I Circle,
Kumbakonam,
Thanjavur District. .. Respondent in all WPs

COMMON PRAYER: Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned orders dated 20.03.2018 passed by the respondent with regard to TIN Nos. 33853940443/2011-2012,33853940443/2012-2013,33853940443/2013-2014, 33853940443/2014-2015, 33853940443/2015-2016 and 33853940443/2016-2017 respectively, and consequent demands in Form “O”, Form “RR” dated 20.03.2018 and quash the same and consequently direct the respondent to hold proper inquiry by giving full opportunity of personal hearing by providing documents required by the petitioner and by receiving all documents submitted by petitioner and by considering the same.

For Petitioner : Mr.AL.Kannan

For respondent : Mr.R.Murugan
Addl. Government Pleader
(In all W.Ps)

COMMON ORDER

The petitioner Trading Corporation is a partnership firm and the petitioner is a registered dealer on the file of the respondent under the Tamil Nadu Value Added Tax Act and under the Central Sales Tax Act, 1956 and he has been filing returns regularly through online, after deducting the allowed discount. At that stage, the petitioner's place of business was surprisingly inspected by the Officers of the Enforcement Wing on 31.05.2017 and enquiry was held and the Enforcement Wing Officers have not furnished any details. The Enforcement Wing Officers submitted their report to the respondent and copy of the report was also not furnished to the petitioner. On the next day, the petitioner was directed to appear in person before the office of the respondent and a statement was also received from the petitioner, as if he was aware of the report. Based on the said report, the respondent herein issued a notice dated 17.01.2018. Thereafter, by a letter, dated 02.02.2018, the petitioner has sought time to produce the materials to substantiate their claims. But, without considering his request, the impugned re-assessment orders have been passed by the respondent on 20.03.2018 for the assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17. Aggrieved over the same, the petitioner is before this Court.

2. Heard the learned counsel appearing for the parties and perused the records carefully.

3. Admittedly, notices for the assessment years 2011-12, 2012-13, 2013-14, 2014-15, 2015-16, 2016-17 were issued by the respondent on 17.01.2018 alleging various defects and omissions and proposing to levy penalty under Section 27 (3) of the TNVAT Act, calling for objections from the petitioner. The petitioner sought for further time to give his explanation vide letter dated 02.02.2018. The respondent, without considering the same, issued the impugned orders, dated 20.03.2018. The Commissioner of Commercial Taxes, pursuant to the recommendations of the Hon'ble Justice Sri Ramanujam Committee, has laid down certain procedures to be followed by the assessing authority before passing final orders. That circular is binding on the respondent. It mandates that personal hearing shall be given even such an opportunity is asked or not. But, in contravention of the circular, without furnishing required documents and without providing an opportunity of personal hearing, after filing of the objections, the respondent has passed the impugned order.

4. 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 the opportunity of personal hearing cannot be denied, even if the objections not filed. The relevant portion is extracted hereunder:

> *"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.*
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> *11. The Supreme Court in Swami Devi Dayal Hospital and Dental College vs. The Union of India and others(2013(10) Scale 608) observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision."*

5. In this case, admittedly, the petitioner has not submitted objections. But, the respondent, without giving him further time for filing objections, has passed the impugned orders, also without giving an opportunity of personal hearing. Therefore, the impugned orders are liable to be set aside.

6. In view of the above, the impugned orders, dated 20.03.2018, passed by the respondent are set aside and the matter is remanded back to the file of the respondent for fresh consideration. The respondent is directed to provide all the required documents to the petitioner within a period of two weeks from the date of receipt of a copy of this order and also provide an opportunity of personal hearing to the petitioner and then, to pass orders on merits and in accordance with law, within a period of four weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records

7. These Writ Petitions stand disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Assistant Commissioner (CT)
Kumbakonam -I Circle,
Kumbakonam,
Thanjavur District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86770 to 86775

VS
TE/SV/SAR-4 : 26/10/2018 : 4P/3C

Common Order made in
W.P(MD)Nos.8262 to 8267 of 2018
25.09.2018