BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.8471 to 8475 of 2018
and W.M.P.(MD) Nos.7993 to 7997 of 2018

TVL Gemini Iron & Steels Private Limited,
represented by its Manager, M.Muthuvappa
Plot No.E/29, 30 & 31
SIDCO Industrial Estate,
Thurvakudi, Trichy - 15. .. Petitioner in all cases

Vs.

1.The Assistant Commissioner of Sales Tax(CT)(FAC),
Thiruvarumbur,Assessment Circle,
Trichy.

2.Deputy Commissioner,
Of Sales Tax/Appellate Authority,
Trichy. ... Respondents in all cases

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the entire records of the first respondent in his proceedings TN No.33613565476/2011-2012, 2012-2013, 2013-2014, 2014-2015 and 2015-2016 respectively dated 14.03.2018 and quash the same and consequently direct the first respondent herein to grant reasonable sufficient opportunity of being heard by submitting the materials documents before the assessing officer, and thereafter pass the order of assessment of the petitioner company for the year 2011 and 2012, 2012 and 2013, 2013 and 2014, 2014 and 2015 and 2015 and 2016 respectively.

In all writ petitions:
For Petitioner : Mrs.P.Bagyalakshmi
For Respondents : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

The petitioner was served with pre-revision notice dated 15.02.2018. Thereafter notice dated 28.02.2018 was issued by the respondent Department reminding the petitioner to file an objection on or before 14.03.2018 and also fixing the same date as personal hearing date. However, the petitioner has sought for adjournment by his letters dated 29.02.2018 and 10.03.2018. The respondent neither accepted nor rejected the request of the petitioner. But, on 14.03.2018 the impugned order came to be passed. Aggrieved over the same, the petitioner is before this Court.

2. The learned counsel for the petitioner would submit that originally, notice was issued on 28.02.2017 and after a long time i.e after one year another notice was issued on 15.02.2018. He sought some time in view of illness of the Chattered Accountant, who is having accounts. Without granting or rejecting the said request made by the petitioner and without affording an opportunity of personal hearing, the impugned order came to be passed, which is in violation of principles of natural justice.

3. The learned Government Advocate appearing for the respondents would vehemently contend that the original notice was issued on 28.02.2017 giving opportunity to the petitioner to file objection. The petitioner has deliberately kept silent and has not submitted objections for almost one year. Therefore, another reminder was issued calling upon the petitioner to submit objection and to avail an opportunity of personal hearing, which was fixed on the same day. Without availing the same, with an ulterior motive for delaying the process, the petitioner has given a false reply statement and therefore, the request of the petitioner cannot be acceded to.

4. I have considered the rival contentions made on either side and perused the materials available on record.

5. Admittedly, notice of hearing was issued on 15.02.2018 and in that, the petitioner was called for personal hearing. However, a request for adjournment was sought by the petitioner siting some reasons upto 10.03.218. The respondent should have replied one way or other either accepting or rejecting the request before passing the order on merits. On the other hand, without sending any reply to the request, the impugned orders came to be passed. This Court time and again issued instructions in this regard. In spite of the same, the respondents have mechanically passed the orders. Failure to communicate the decision on the request made by the petitioner for extension of time will vitiate the order.

6. The Head of the Department i.e the Commissioner of Commercial Tax has given clear instruction as to personal hearing. It is mandated in Circular dated 03.02.2014 issued by him in Clause 3(a), which is extracted hereunder:

> 3(a): Passing of Orders:
>
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:

i) After issue of notice calling for the objections, if, any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.

ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.

Iii) As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not”.

But in the instant cases, no personal hearing was given to the petitioner before passing the impugned orders.

7. The Hon'ble Division Bench of this Court in W.A.(MD) No.234 to 240 of 2015(In **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 as follows:

> 10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. 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 Authoirty to pass orders 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.

8. This Court, after considering the facts and circumstances of the case, is inclined to set aside the impugned order dated 14.03.2018. Accordingly, the impugned order dated 14.03.2018 is set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit objections within a period of 15 days from the date of receipt of a copy of this order. On such receipt of objection, the respondent shall afford an opportunity of personal hearing to the petitioner and decide the matter on merits. If the petitioner fails to file objections, it is open to the respondent to fix the date for personal hearing and after hearing the petitioner, the respondent shall pass orders on merits and in accordance with law. The said exercise shall be completed within a period of two months thereafter.

9. In the result, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Assistant Commissioner of Sales Tax(CT)(FAC),
   Thiruvarumbur, Assessment Circle,
   Trichy.

2. The Deputy Commissioner,
   Of Sales Tax/Appellate Authority,
   Trichy.

Copy To:-

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

+ 2 CC TO Mr.P.BAGYALAKSHMI, ADVOCATE IN SR No. 70006
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 69776

CM
TE/SKN-RSK/SAR-2 : 27/07/2018 : 4P/7C

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