BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.8693 of 2018

and

W.M.P(MD)No.8153 of 2018

Tvl.Sree Vadivambigai Textile Mills (P) Ltd.,
represented by its
Managing Director,
R.Subramanian ... Petitioner

Vs.

1. The Commissioner of Commercial Taxes,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2. The Assistant Commissioner (CT) (FAC),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai - 623 560. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN 33365400126/2012-13, dated 05.03.2018 and quash the same.

For Petitioner : Mr.Raja.Karthikeyan
For Respondents : Mr.S.Dhayalan
Government Advocate

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ORDER

Complaining violation of principles of natural justice against the order passed by the second respondent, dated 05.03.2018, the petitioner is before this Court.

2. According to the petitioner, he is running a textile mill and he filed returns for the assessment year 2012-13. Pursuant to the surprise inspection conducted by the Enforcement Wing officials on 29.05.2015, a revision notice was issued to the petitioner pointing out certain defects. For the revision notice dated 10.06.2016, the petitioner filed his reply on 07.07.2016. However, the second respondent on considering the objections,

accepted the explanation of the petitioner in respect of certain defects and rejected in respect of one and passed orders on 05.03.2018. According to the petitioner, personal hearing was not given and therefore, the order passed by the second respondent is violative of principles of natural justice.

3. The learned Government Advocate appearing for the respondents would submit that the petitioner was given an opportunity of personal hearing and it was endorsed by the Accounts Officer of the petitioner. The personal hearing was afforded on 12.07.2016 and thereafter, the impugned order came to be passed.

4. I have heard the rival contentions.

5. According to the learned Counsel for the petitioner, it is only an endorsement obtained from the Accounts Officer and actual personal hearing had not taken place. The order impugned is passed without having jurisdiction in respect of certain defects. Had an opportunity to explain it in a personal hearing, the petitioner would have availed the same, but due to non-provision of opportunity of personal hearing, the petitioner has approached this Court without availing the appeal remedy.

6. The fact remains that affording of opportunity of personal hearing is mandatory as held by the Division Bench of this Court in in a batch of Writ Appeals in ***W.A.Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018, wherein it is held as under:

Denial of Personal hearing:

> "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 authority 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.
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> 11.The Hon'ble 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."

7. The contention of the petitioner is that the endorsement obtained from the Accounts Officer is done by force and he is prepared to submit all the documents.

8. Considering the rival submissions and in view of the decision of the Division Bench of this Court in ***W.A.Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018, the impugned order passed by the second respondent in TIN 33365400126/2012-13, dated 05.03.2018, is set aside and the matter is remanded back to the second respondent for fresh consideration. The second respondent is directed to consider all the objections of the petitioner and also receive the documents with regard to the proposals and take a fresh decision on these issues, after affording an opportunity of personal hearing to the petitioner. Such exercise shall be completed within one month from the date of receipt of a copy of this order.

9. Accordingly, this writ petition is disposed of as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To
1. The Commissioner of Commercial Taxes,
Office of the Principal and Special
Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai – 600 005.

2. The Assistant Commissioner (CT) (FAC),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai – 623 560.

+1cc to Mr.B.Rooban, Advocate Sr.No.75670
+1cc to Spl.Government Pleader Sr.No.75762

RSB
VB/KAK/SAR4/11.08.2018/3P/5C

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and
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