



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

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W.P (MD) .Nos.9366, 10481 and 10482 of 2018
and

W.M.P. (MD) .No.8647 of 2018 in W.P. (MD) .No.9366 of 2018
W.M.P. (MD) .No.9572 of 2018 in W.P. (MD) .No.10481 of 2018
W.M.P. (MD) .No.9573 of 2018 in W.P. (MD) .No.10482 of 2018

M/s.Thilagarathinam Match Works,
rep. by its Proprietor, K.Thangaraj,
Door No.628A/5, Illupaiyurani Village,
Kovilpatti - 628 501,
Tuticorin District.

... Petitioner in
W.P. (MD) .No.9366 of 2018

Mr.T.K.T.Thilagaratnam,
95, Pathirakaliyamman Kovil Street,
Kovilpatti - 628 502.

... Petitioner in
W.P. (MD) .No.10481 of 2018

M/s.S.R.Traders,
rep. by its Proprietor R.Selvaraj,
45-A Chekkadi Street,
Kovilpatti - 628 502.

... Petitioner in
W.P. (MD) .No.10482 of 2018

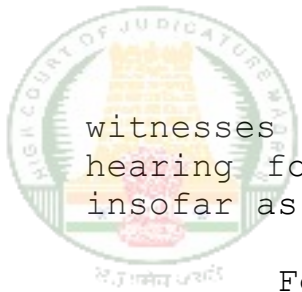
Vs.

1.The Commissioner of Central Excise,
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

2.The Superintendent of Central Excise (Adjudication),
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

... Respondents in
all the petitions.

COMMON PRAYER:- Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order passed by the 1st respondent in his Order File No.V/36/15/21/2011-Adjn Vol-II (Tirunelveli), dated 28.03.2018, sent on 11.04.2018 and quash the same and to direct the respondents to afford an opportunity to cross examine the



witnesses and thereafter, afford an opportunity of personal hearing for the show cause notice No.58/2010, dated 12.11.2010, insofar as the petitioners are concerned.

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For petitioners in
these petitions : Mr.M.MD.Ibrahim Ali

For respondents in
these petitions : Mr.R.Aravindan
SCGSC

COMMON ORDER

These writ petitions have been filed by the petitioners challenging the order passed by the first respondent, dated 28.03.2018, whereby and whereunder the first respondent directed the respondents to pay their respective duty as quantified in the demand notices.

2.The issue involved in these writ petitions are one and the same and therefore, they heard together and disposed of by way of this common order.

3.The petitioners are manufacturers of the matches with the aid of power. On 12.11.2010, the Assistant Director General of Central Excise Intelligence, Chennai had issued show cause notices to the petitioners calling upon them to show cause as to why the Central Excise Duty on machine made matches manufactured and cleared without payment of duty during the period 2006 to 2009, under the proviso to sub Section 1 of Section 11-A of the Central Excise Act should not be demanded. The petitioners have submitted their reply to the said notice. On 20.02.2018, the respondents issued notice for personal hearing. But, the respondents, without providing an opportunity of personal hearing, has hurriedly passed the impugned order on 28.03.2018, directing the petitioners to pay their respective duties. Challenging the said order, the petitioners are before this Court.

4. The only ground on which the impugned order sought to be quashed by the petitioners is that though the respondents issued notice for personal hearing, the first respondent has not given an opportunity of personal hearing to the petitioners and without their consent, the first respondent, by mentioning in the order as if "the matter was discussed with the counsel and with his oral consent, the matter is taken up for adjudication", hurriedly passed the impugned order in violation of principle of natural justice and therefore, the impugned order may be set aside and the matter may be remanded back.

<https://hcservices.courts.gov.in/hcservices/>
5. The learned counsel appearing for the respondents on the above said submission of the learned counsel for the petitioners.



6. It is seen that in paragraph No.9.2 of the impugned order itself, the first respondent has clearly admitted as follows:

"As requested by the counsel to explain their reply orally in detail another PH (Personal Hearing) was fixed on 06.03.2018 and it was decided to issue a letter to Mr. Hansraj Bansal to appear on that day. However, the PH could not be held on that date due to administrative reasons. The submission dated 06.03.2018 by M/s. S.R. Traders and R. Selvaraj together was taken on record. Though the counsel requested for a fresh date, the matter was discussed with the counsel and with his oral consent, the case is taken up for adjudication."

7. When the personal hearing could not be held due to administrative reasons, the first respondent ought to have passed the impugned order, after providing such opportunity to the petitioners. But, in violation of the principle of natural justice, the first respondent has passed the impugned order. As there is a clear violation of the principles of natural justice, this Court is inclined to set aside the impugned order.

8. In view of the above, this impugned order is set aside and the matter is remanded back to the file of the first respondent to proceed from the stage of personal hearing. The first respondent is directed to issue notice fixing the date for personal hearing, scrupulously follow the order passed in W.P.(MD).Nos.1106 to 1108 of 2013 dated 29.01.2013 and after providing sufficient opportunity to the petitioners, pass appropriate orders on merits and in accordance with law. The said exercise shall be completed by the first respondent within a period of eight weeks from the date of receipt of a copy of this order. It is needless to say that the petitioners shall cooperate with the first respondent for the disposal of the case within the above stipulated time.

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

Sd/-

Assistant Registrar (WRITS)

// True Copy //

Sub Assistant Registrar (CS-IV)



To

1. The Commissioner of Central Excise,
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

2. The Superintendent of Central Excise (Adjudication),
Central Revenue Building,
Bibikulam,
Madurai - 625 002.

Copy to:

The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

+ 3 CC TO MR.MOHAMED IBRAHIM, ADVOCATE IN SR NO.83912,83913 &
83914
+ 1 CC TO MR.R.ARAVINDAN, ADVOCATE IN SR NO.83648

gcg
BU/PM/SAR-II : 05.10.2018 : 4P/8C

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