BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.14863 to 14870 of 2018
and
W.M.P.(MD)Nos.13402 to 13409 of 2018

In W.P.(MD) No.14863 of 2018:

TVL Zarina Leather Exports,
645,Batlagundu Road, Kuttipatti,
Dindigul- 624 001. .. Petitioner in all WP'S

Vs.

The Sales Tax Officer,
Dindigul- III Assessment Circle,
Sub Collector's Officer Road,
Dindigul - 624 001. ... Respondent in all WP'S

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus calling for the records pertaining to the Order in

TIN No.33725240848/2007-2008 dated 28.03.2018
TIN No.33725240848/2008-2009 dated 19.03.2018
TIN No.33725240848/2009-2010 dated 28.03.2018
TIN No.33725240848/2010-2011 dated 28.03.2018
TIN No.33725240848/2011-2012 dated 28.03.2018
TIN No.33725240848/2012-2013 dated 28.03.2018
TIN No.33725240848/2013-2014 dated 19.03.2018
TIN No.33725240848/2014-2015 dated 19.03.2018 respectively on file of respondent and quash the same as illegal and contrary to law and direct the respondent to follow the procedure under the TNVAT Act.

In all writ petitions:

For Petitioner : Dr.A.Thiyagarajan
Senior Counsel for Mr.S.Karunakar
in all WP'S

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader
in all WP'S

COMMON ORDER

Aggrieved over the violation of the concept of natural justice in passing the assessment orders dated 28.03.2018 pertaining to the assessment years 2007-08 to 2014-15 by the respondent, the petitioner has preferred these writ petitions.

2. Mere perusal of the order made by the respondent shows that the revision notice was sent on 03.01.2018 and it was received by the dealer on 13.03.2018. In the said notice, 15 days time was granted for filing the objections from the date of receipt of the same, which falls on 28.03.2018. But without waiting for the objections to be filed by the dealer, the assessment officer has passed orders on 28.03.2018 itself pertaining to the assesement years 2008-09 to 2014-15. Hence, the petitioner is before this Court.

3. The learned Senior Counsel Dr.A.Thiyagarajan, for the petitioner would submit that Commissioner of Commercial Taxes has already issued a circular setting down the procedures regarding receipt of the objections in passing orders by following the recommendations of the Hon'ble Justice Ramanujam Committee. The relevant portion of the said circular reads as follows:

"8.The Assessing Officers should give reasonable time to the dealers according to the circumstances of the case to file their objections. If further time is asked for on reasonable grounds, it should be allowed. The date and hour and the place at which objections should be filed, should be noted precisely in the notice. If representations are received by the time specified or before orders are passed, they should be considered and the case dealt with appropriately. If oral representations are made, they should be properly recorded in the file and action taken thereon. Before

passing orders, an assessing authority should satisfy himself whether the time fixed for filing objections had expired and whether the dealer had filed any objection. If the dealer's objections are received after final orders had been passed, a reply to that effect should be sent to the assessee.

9. Final order shall not be passed on the last date itself fixed to file reply but only after the next day of the last date fixed. Time granted to file reply is available upto the end of the working hours of that data. If the last date fixed for filing reply happens to be a holiday, the next working day is the last date to file reply."

But without following the procedures set down in the above said circular, the assessing authority hastily passed the impugned orders even before the day fixed for filing objections is lapsed.

4. The learned Senior Counsel would also rely on the judgment of this Court reported in ***1972 STC 151*** in the case of ***S.Velu Palandar vs. The Deputy Commercial Tax Officer, Thanjavur-II,*** wherein the Hon'ble Mr. Justice Ramprasada Rao has observed as under:

" *.... If an opportunity is given to a party to explain itself or submit its objections, such an opportunity must be realistic and not notional. If any time, such as the one given in this case, is given, the normal presumption is that the person who is to state his objections can file the same before the expiry of the working hours of that date. Such outer limit may be fixed of administrative convenience; but, if it comes to the question of appreciation of rights and obligations of parties, equity and justice interfere and compel courts to afford a reasonable and effective opportunity to persons aggrieved and affected to state their objections by the end of the working day in question notwithstanding the fact that an hour, a minute or a second of the day is noted in that order."*

5. Therefore, it is crystal clear that the authority has passed the orders without providing ample opportunity for the petitioner to submit his objections within the last day fixed by the authority and it will amount to violation of natural justice.

6. Hence, this Court, after considering the facts and circumstances of the case, is inclined to set aside the impugned orders and accordingly the impugned orders dated 19.03.2018 and 28.03.2018, are set aside and the matters are remanded back to the respondent for fresh consideration. The petitioner is directed to submit their objections within a period of 15 days from the date of receipt of the copy of this order and co-operate with the assessing officer in the proceedings. On receipt of such objection, the respondent shall pass orders on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner, within a period of one month from the date of receipt of the objections.

7. In the result, the writ petitions are disposed of as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To
The Sales Tax Officer,
Dindigul- III Assessment Circle,
Sub Collector's Officer Road,
Dindigul – 624 001.

+2 CC to Mr.S.KARUNAKAR, Advocate in SR.No.72429 & 72431
+1 CC to the Special Government Pleader, SR.No.72793

PJL
RJ/SV/SAR-2/23/07/2018 - 4P/5C

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