BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.06.2018
CORAM
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD) Nos.11129 to 11133 of 2018
and
W.M.P.(MD).Nos.10183 to 10187 of 2018

M/s. Sri Vaari Spinning Mills,
Represented by its Partner,
C7, MVM Nagar,
Karur Road, Dindigul. ... Petitioner in all Writ Petitions

Vs.

The State Tax Officer-III,
(On Deputation at Dindigul I),
Dindigul I Assessment Circle,
Dindigul. ...Respondents in all Writ Petitions

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India to issue Writs of Certiorarified Mandamus, to call for the records of the respondent in the impugned orders in TIN Nos.33165201192/2011-12, 33165201192/2012-13, 33165201192/2013-14, 33165201192/2014-15, 33165201192/2015-16, respectively dated 10.04.2018, quash the same as it is violative of Section 22, Section 27 of the TNVAT Act, 2006, Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and is against the ratio of the decision of this Court in Jinsason Distributors Vs. CTO (2013) 59 VST 256 and Infinity Wholesale Limited Vs. ACCT (2015) 82 VST 457 and further direct the respondent to grant a reasonable opportunity of being heard and to pass orders in accordance with law or to issue any other appropriate Writ or Order.

For Petitioner : Mr.K.Vaitheeswaran
(In all Writ Petitions)

For Respondents : Mr.S.Dhayalan
Government Advocate
(In all Writ Petitions)

COMMON ORDER

By consent of both parties, the main Writ Petitions themselves are taken up for final disposal.

2. Based on the Tamil Nadu Value Added Tax Act, 2006, [hereinafter referred to as 'the Act'], the revision notices were issued by the respondent to the petitioner on 15.03.2018, for production of all the accounts. The petitioner received the notices on 16.03.2018, but they have not produced any documents or filed their objections before the Authority. Therefore, on 10.04.2018, final orders were passed by the respondent.

3. It is the contention of the learned counsel for the petitioner that they have made request in person with the concerned authority for adjournment for producing all the records. The post of Assessing Officer, Dindigul-I, fell vacant. The State Tax officer-III, who is in deputation has passed the impugned orders without giving an opportunity of personal hearing to the petitioner. The petitioner, aggrieved over the absence of personal hearing and an opportunity to submit their objections, have filed these Writ Petitions.

4. Mr.Dhayalan, learned Government Advocate appearing for the respondent would submit that the petitioner was served with the notices on 16.03.2018. But they failed to submit their objections or reply to the above notices till the date of passing of the impugned orders. Therefore, the proposals were confirmed and final orders have been passed. Hence, if there is no illegality in passing the orders in the absence of any objection or request by the petitioner, it need not be interfered with.

5. Heard the learned counsel on either side.

6. Admittedly, the Revision notices were issued on 16.03.2018. Based on the Act, the discrepancies were noted and more than ten defects were pointed out.

7. On a perusal of the revision notices, it could be seen that it involves lot of transactions between various sellers. In such event, it certainly requires furnishing of documents and personal hearing.

8. It is conducive to have personal hearing even for the authority for passing clear orders. But without affording the opportunity of personal hearing or issuing any further notice, the Authority has decided the matter and confirmed the proposals as found in the revision notices.

9. In similar circumstances, a Division Bench of this Court in a batch of Writ Appeals in W.A(MD).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, has 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.

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 is required in such cases, unless specifically excluded by a statutory provision."

10. The said finding is squarely applicable to the case on hand. Therefore, the impugned orders passed by the respondent is violative of principles of natural justice. The final orders passed by the respondent in the impugned proceedings in TIN Nos.33165201192/2011-12, 33165201192/2012-13, 33165201192/2013-14, 33165201192/2014-15, 33165201192/2015-16, respectively dated 10.04.2018, are set aside and the matter is remanded back to the respondent for considering afresh.

11. The petitioner is directed to submit their objections or reply to the pre-revision notices within a period of 15 days from the date of receipt of a copy of this order. On such receipt of the representation of the petitioner, the respondent shall provide with all other documents and consider the objections filed by the petitioner in accordance with law. The petitioner shall also be given an opportunity of personal hearing in the process of passing final orders. This exercise shall be completed within a period of three months from the date of receipt of a copy of this order.

12. These Writ Petitions stand disposed of with the above observations. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To
The State Tax Officer-III,
(On Deputation at Dindigul I),
Dindigul I Assessment Circle,
Dindigul.

+1CC to Mr.J.MADHU SUTHANAN, Advocate, SR.No.67641
+1CC to the Special Government Pleader SR.No.67351

W.P.(MD) Nos.11129 to 11133 of 2018
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