BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD).Nos.13430 to 13434 of 2018
and
W.M.P.(MD)Nos.12236 to 12240 of 2018

DCW Limited,
Rep. by General Manager
(Legal & Indirect Taxation),
Sahupuram - 628 229,
Tuticorin District,
Tamilnadu.
: Petitioner in all W.Ps.

Vs.

The State Tax Officer,
Tiruchendur,
Tamil Nadu. : Respondent in all Wr.Ps.

Common Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the orders of the respondent bearing reference Nos.471736/2010-11; 471736/2011-12; 471736/2012-13; 471736/2013-14 and 471736/2014-15, dated 30.04.2018, quash the same and consequently, direct the respondent to de novo adjudicate the Revised Assessment Notices dated 13.03.2018 for the assessment years 2010-2011; 2011-2012; 2012-2013; 2013-2014 and 2014-2015, respectively, while following the principles of natural justice.

For Petitioner in all the W.Ps. : Mr.P.R.Raman, Senior Counsel for Mr.C.Seethapathy

For Respondent in all the W.Ps. : Mr.S.Dhayalan, Government Advocate

COMMON ORDER

Mr.S.Dhayalan, learned Government Advocate, takes notice for the respondent in all the Writ Petitions.

2. By consent, the Writ Petitions are taken up for final disposal at the stage of admission itself.

3.The petitioner have come up with these present Writ Petitions for a Writ of Certiorarified Mandamus, calling for the records in connection with the orders of the respondent bearing reference Nos.471736/2010-11; 471736/2011-12; 471736/2012-13; 471736/2013-14 and 471736/2014-15, dated 30.04.2018, respectively, quash the same and consequently, direct the respondent to de novo adjudicate the Revised Assessment Notices, dated 13.03.2018 for the assessment years 2010-2011; 2011-2012; 2012-2013; 2013-2014 and 2014-2015, respectively.

4. The petitioner is a Company incorporated under the Companies Act, 1956 and is a manufacturer of Caustic Soda, PVC Resin and other chemicals. The petitioner Company is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and were filing returns by way of E-filing. In respect of assessment years 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015, the respondent issued pre-assessment notices dated 28.11.2017. On 07.12.2017, the respondent sought for certain documents with regard to TNVAT as well as CST. Thereafter, on 08.01.2018, personal hearing was afforded. Thereafter, the respondent extended the dates of personal hearing on the request of the petitioner on 29.01.2018, 14.02.2018, 23.02.2018 and 09.03.2018. However, the petitioner sought for adjournment on 20.03.2018 seeking documents pertaining to furnace oil demand alleged by the Audit Wing. This communication was received on 21.03.2018. Thereafter, on 13.03.2018, revised assessment notices were issued by the respondent and the petitioner submitted their interim reply on 03.04.2018 and also the originals of C and F Forms along with copy of export shipping bills and BRC copies and sought for further time and also an opportunity of personal hearing. Thereafter, again, on 02.05.2018, the petitioner requested for personal hearing. This letter was also acknowledged by the respondent on 02.05.2018. However, without affording any opportunity of personal hearing, the impugned orders came to be passed on 30.04.2018. Aggrieved over the impugned orders, the petitioner is before this Court.

5. On perusal of the impugned orders, it is seen that personal hearing was afforded prior to issuance of the revised assessment notices dated 13.03.2018. However, after issuance of revised assessment notices, personal hearing was not afforded to the petitioner, in spite of the request made by them. The respondent has considered the personal hearing afforded to the petitioner on the previous occasions and taken those objections into consideration and passed the final orders. It is also observed that after issuance of revised assessment notices, the petitioner have not submitted any reply and have not availed the opportunity of personal hearing. In fact, in the interim reply submitted by the petitioner dated 03.04.2018 and 02.05.2018, they have specifically asked for personal hearing. But the respondent has passed the impugned orders on the basis that personal hearing was already afforded on 22.02.2018, but the petitioner has not availed the said opportunity and instead, he

has sought for extension of time. Therefore, the intention of the petitioner is only to drag on the matter.

6. It is well settled that the Assessing Authority shall give ample opportunity to the dealer for filing his objections and also afford personal hearing before passing final orders. In this regard, there were instructions issued by the department laying down the criteria for passing final orders adhering to the principles of natural justice.

7. Insofar as the present case is concerned, the revised assessment notices were issued on 13.03.2018. After the issuance of revised assessment notices, an opportunity of submitting objections was not given by the respondent. Further, it was treated as a continuation of the previous proceedings and without affording an opportunity of personal hearing, the impugned orders came to be passed.

8. 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:
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> "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 is required in such cases, unless specifically excluded by a statutory provision."

9. In the case on hand, since the impugned orders are passed without complying with the requirements of principles of natural justice, it shall be construed as not sustainable in law.

10. In the result, the Writ Petitions are allowed and the impugned orders dated 30.04.2018 are set aside and the matters are remanded back to the respondent for fresh consideration. The respondent is directed to furnish all the documents relevant to the

assessment and receive objections from the petitioner and thereafter, fix a specific date for personal hearing and pass orders after hearing the petitioner's objections on merits and in accordance with law. This exercise shall be completed, within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The State Tax Officer,
Tiruchendur,
Tamil Nadu.

+1CC to Mr.C.Seethapathy Advocate in SR.No.69671.

+1CC to Special Government Pleader in SR.No.69781.

RJ2/SML
DS/SKN/RSK/SAR-4 :23.07.2018: 4P/4C

Common order made in
W.P.(MD).Nos.13430 to 13434 of 2018
25.06.2018