BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.07.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

W.P.(MD)Nos.11540 to 11543 of 2018 and
W.M.P.(MD)Nos.10509 to 10512 of 2018

Madhucon Projects Limited,
Represented by GVLN Sastry, Manager (F&A),
KM 216, NH 45, Madurai Tuticorin Road,
Senthilkkari, Ettayapuram,
Tuticorin. .. Petitioner in all the WPs

vs

Commercial Tax Officer,
Ettayapuram,
Tuticorin District,
Pin: 628 902. .. Respondent in all the WPs

PRAYER IN W.P.(MD)Nos.11540 & 11541 of 2018: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for issuance of a Writ of Certiorari, to call for the records relating to TIN No.33841602409/2014-15, dated 15.03.2018 and TIN No.33841602409/2013-14, dated 20.03.2018 respectively passed by the respondent and quash the same as arbitrary and illegal.

PRAYER IN W.P.(MD)Nos. 11542 & 11543 of 2018: These Writ Petitions are filed under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, to call for the records relating to Assessment Order in CST Asst.No.764868/2013-14 dated 28.03.2018 and CST Asst.No. 764868/2012-13 dated 12.04.2018 respectively passed by the respondent and quash the same as arbitrary and illegal.

In all the WPs

For Petitioner : Mr.Joseph Prabakar
For Respondent : Mr.C.Ramar
Additional Govt. Pleader

COMMON ORDER

The petitioner is an EPC contractor engaged in the business of construction of various Infrastructure projects and had executed various works across India. Likewise petitioner undertook construction of roads in the State of Tamil Nadu for NHAI and for that reason it had obtained proper registration from the concerned authorities.

2.While so, officials of Enforcement Wing of the Respondent Department conducted an inspection on 22.06.2016 and 23.06.2016 and having basis upon the alleged inspection report of the Enforcement Wing, the Respondent herein called for certain details for the assessment years stated in the prayers as above in Writ petitions in W.P.(MD)Nos.11540 to 11543 of 2018.

3.According to the petitioner, those notices were based entirely on the inspection report given by the Officials of Enforcement Wing, in overall non-application of respondent's mind, for which a suitable reply furnishing Material particulars were made by the petitioner.

4.However, regardless of the Material particulars submitted by the petitioner and without affording an opportunity of personal hearing, the respondent passed the final assessment orders. Thereupon petitioner aggrieved over respondent's orders, passed without adherence to the principles of natural justice, is before this Court agitating the impugned orders are arbitrary and against the law.

5.It is the further case of the petitioner that the respondent premeditatedly and mechanically passed the impugned Orders without even offering an opportunity of Personal hearing. Though objections were called for by the respondent and the petitioner accordingly submitted all required details, the respondent failed to consider the same.

6.I heard Mr.Joseph Prabakar, learned counsel for the Petitioner and Mr.C.Ramar, learned Additional Government Pleader for the Respondent in all the Writ Petitions and perused the entire material available on records.

7.The learned counsel for the petitioner to substantiate his claim that the impugned orders having been passed violating the principles of natural justice are liable to be set aside, relied over the following Decisions of this Court enclosed in the typed set of papers dealing cases involving identical claims and counter claims:

(i) Apple India (P) Ltd., Vs. Assistant Commissioner (CT), Chennai reported in 2017 (353) E.L.T. 206 (Mad.).

(ii) M/s.Albis Constructions Pvt. Ltd., Vs. The Assistant Commissioner (CT) (FAC), Chennai reported in 2017-VIL-168-Mad.

(iii) Bonfiglioli Transmissions Private Limited Vs. Assistant Commissioner (CT), Thirumudivakkam Assessment Circle, Chrompet, Chennai made in W.P.Nos.12964 to 12967 of 2017, dated 13.07.2017.

(iv) King Overseas Vs. Asstt. Commr. of Cus. (Refunds), Chennai-I, reported in 2015 (326) E.L.T. 139 (Mad.)

8.That apart it is the case of the petitioner that the impugned orders have been passed by the Respondent in gross violation of proviso to Section 27(2) of the TNVAT Act, 2006, which contemplates that without affording an opportunity of Personal Hearing a Final assessment Order cannot be passed. The impugned orders are thus unsustainable and cannot withstand Judicial Scrutiny that they were passed without following the instructions issued by the Commissioner of Commercial Taxes in Circular No.7/2014 (BB) 3587/2014 dated 03.02.2014 and that the respondent without independently applying his mind but had gone entirely by the report of the Enforcement wing.

9.Per contra, the learned Additional Government Pleader appearing for the respondents contends that despite of sufficient time the petitioner has not turned to file their objections in time. More so, the petitioner sought further time to appear before the respondent and the same is impermissible in view of Revenue well-being of the State, thus, the impugned orders passed by the respondent does not require any interference.

10.Though strenuous contentions were put forth by the learned Additional Government Pleader defending the impugned orders, the point of law in a similar circumstance involving identical facts and circumstances came to be decided by the Hon'ble Division Bench of this Court in a batch of Writ Appeals in W.A.(MD).Nos.234 to 240 of 2015 in the matter of *G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore, dated 16.03.2018*, holding as following that

> "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.

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.”

11.The said legal preposition was reiterated by a recent Decision of the Hon’ble Division of this Court in a batch of writ petitions in the matter of *M/s.Dhanvijay Textiles Pvt. Ltd., Represented by its Director, Sri.K.Vijayshankar Vs. The Assistant Commissioner (CT)(FAC), Mettupalayam Circle, Mettupalayam* reported in *2018-TIOL-712-HC-MAD-VAT*.

12.Both the Decisions referred above, precisely demonstrate that affording personal hearing before passing final assessment orders in pursuance to the pre-revision notices is mandatory and that an independent notice of hearing fixing a specific date for appearance, irrespective of receipt of objection has to be communicated and the alleged defaulter has to be heard before passing the Order.

13.Admittedly in the case on hand, the respondent failed to follow the above string by affording personal hearing to the petitioner and it is again seen that the impugned orders are passed mechanically.

14.Thus the above referred decisions of the Division Bench of this Court made in the matter of *G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore* in a batch of Writ Appeals in W.A(MD).Nos.234 to 240 of 2015 and *M/s.Dhanvijay Textiles Pvt. Ltd., Represented by its Director, Sri.K.Vijayshankar Vs. The Assistant Commissioner (CT)(FAC), Mettupalayam Circle, Mettupalayam* reported in *2018-TIOL-712-HC-MAD-VAT* squarely applies to the case on hand.

15.In the result:

(a) all these Writ Petitions are allowed and the impugned orders passed in TIN No.33841602409/2014-15, dated 15.03.2018, TIN No.33841602409/2013-14, dated 20.03.2018 respectively and CST Asst. No.764868/2013-14 dated 28.03.2018 and CST Asst. No. 764868/2012-13 dated 12.04.2018 respectively are set aside;

(b) the matters are remanded back to the respondent for fresh consideration, with a direction to the respondent to furnish the petitioner with all the material particulars relied by him in issuing pre-assessment notices and to call for objections and in furtherance the respondent shall afford an opportunity of personal hearing to the petitioner before passing final orders.

(c) the said exercise shall be completed within a period of four months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Ettayapuram,
Tuticorin District - 628 902.

+4cc to Mr.JOSEPH PRABHAKAR, Advocate, SR.No. 71712,71713,
71714,71715

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