BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 26.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P(MD)No.21676 of 2018
and
W.M.P(MD)No.19593 of 2018

Tvl.Balans Agency,
represented by its Proprietor,
T.Suthanthira Balan,
Son of Thiru.Thangadurai Samuel,
Aged about 58 years
30D North Car Street,
Tirunelveli Town,
Tirunelveli. ... Petitioner

vs.

The Assistant Commissioner (CT),
Tirunelveli Junction,
Commercial Taxes Buildings,
High Ground Road,
Palayamkottai,Tirunelveli. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings passed by the respondent in TIN:33495581396/2012-13, dated 27.07.2015 which was served to the petitioner only on 19.09.2018 and quash the same as the same is illegal and passed by grossly violating the principles of natural justice and to redo the assessment after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Honourable Division Bench of this High Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Limited represented by its Chief Executive Officer, Salem vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another.

For Petitioner : Mr.K.Srinivasan
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader

ORDER

This writ petition has been filed for issuance of a Writ of Certiorarified Mandamus, calling for records pertaining to the impugned proceedings passed by the respondent in TIN:33495581396/2012-13, dated 27.07.2015 and quash the same as illegal as it was passed by grossly violating the principles of natural justice and to redo the assessment after providing an opportunity of personal hearing to the petitioner as per the guidelines issued by a Division Bench of this Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Limited represented by its Chief Executive Officer, Salem vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another.

2.According to the petitioner, he is the proprietor of Tvl.Balans Agency and engaged in the business of dealing home appliances goods and an assessee on the file of the first respondent. For the assessment year 2012-13, the petitioner had filed the returns in time and the respondent passed the deemed assessment order accepting the return. While so, the petitioner was served with a notice dated 07.05.2015 alleging that he had not filed any monthly returns and also not paid the taxes due to the department. Pursuant to the said notice, the petitioner appeared before the respondent and stated that he had filed the online monthly returns in Form-I and paid corresponding taxes. Though the respondent stated that he would consider the same, on 10.08.2016, the petitioner received a notice from the respondent requesting him to pay Rs.7,34,068/- towards tax and Rs.11,01,102/- towards penalty totalling to Rs.18,35,170/-. Since the petitioner did not receive any assessment order for the alleged due, he sent a letter dated 29.09.2016 requesting date of service of alleged assessment order for which, there was no reply. Again on 13.07.2018, the petitioner received a notice demanding to pay Rs.18,35,170/- and the petitioner made an application dated 20.08.2018 under the Right to Information Act, 2005 requesting the date of service of the alleged assessment order. In the meantime, the petitioner received a letter dated 08.08.2018 from his banker that his account was attached by the respondent for the alleged demand of Rs.18,35,170/-. Therefore, the petitioner contends that without giving proper reply to his petition under the RTI Act and without affording any opportunity of personal hearing, the respondent passed the impugned assessment order dated 27.07.2015 in gross violation of principles of natural justice and though the assessment order was passed on 27.07.2015, it was served on the petitioner only on 19.09.2018. According to the petitioner, he has reported a total and taxable turnover of Rs.50,27,260/- through online monthly Form-I returns and also paid tax of Rs.7,22,736/- under Section 3(3) of the TNVAT Act which can be verified through the departmental Website. Hence, the petitioner is before this Court.

3.Learned Additional Government Pleader appearing for the respondent would submit that since the petitioner had not filed any return for the assessment year 2012-13, from the verification of sales invoices issued by the petitioner which had been gathered through lorry check, the respondent passed the impugned assessment order. Therefore, he prays for dismissal of the present writ petition.

4.Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

5.It is the contention of the petitioner that without giving proper reply to his petition under the RTI Act and without affording any opportunity of personal hearing, the respondent passed the impugned assessment order dated 27.07.2015 in gross violation of principles of natural justice and though the assessment order is dated 27.07.2015, it was stated to be served on the petitioner only on 19.09.2018. Though the respondent contended that since the petitioner had not filed any return for the assessment year 2012-13, from the verification of sales invoices issued by the petitioner, the impugned assessment order came to be passed, still it is mandatory on the part of the authorities to post the matter for personal hearing. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the Justice Ramanujam Committee, it is mandatory on the part of the respondent to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner. But, in the impugned order, there is no whisper as to the same.

6.In this context, a Division Bench of this Court in an unreported decision in W.A.(MD) No.234 to 240 of 2015 (G.V.Cotton Mills (P) Ltd., Rep. by its Managing Director Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle Corporation of Shopping Complex, Coimbatore), dated 16.03.2018, has held that failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

> ''10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notice. 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 order 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.''

7. On the sole ground of not affording personal hearing, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned order in TIN:33495581396/2012-13, dated 27.07.2015, is set aside and the matter is remitted back to the respondent for fresh consideration. The petitioner is hereby directed to make his reply cum objection, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing, within two days from the date of receipt of a reply/representation from the petitioner and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent with all relevant records and put forth his contentions and after hearing the petitioner, the respondent, by considering the reply and objections, shall pass

appropriate reasoned order, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the respondent shall record the same and pass orders, in accordance with law.

8.This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar(CS-III)

To

The Assistant Commissioner (CT),
Tirunelveli Junction,
Commercial Taxes Buildings,
High Ground Road,
Palayamkottai,Tirunelveli.

+1cc to Mr.K.SRINIVASAN, Advocate, SR.No. 92667

W.P(MD)No.21676 of 2018

BALA
KK/PM/SAR-3/06.12.2018/4P-3C