BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.06.2018

CORAM :

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD).No.13437 of 2018
and
W.M.P.(MD)No.12249 of 2018

DCW Limited,
Rep. by General Manager
(Legal & Indirect Taxation),
Sahupuram - 628 229,
Tuticorin District,
Tamilnadu.

...Petitioner

Vs.

The State Tax Officer,
Tiruchendur,
Tamilnadu.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the order of the respondent, bearing reference TNVAT 33465900009/14-15, dated 30.04.2018, quash the same and consequently, direct the respondent to de novo adjudicate the Assessment Notice, dated 04.04.2018 for the assessment year 2014-15.

For Petitioner : Mr.P.R.Raman, Senior Counsel
for
Mr.C.Seethapathy

For Respondent : Mr.S.Dhayalan
Government Advocate

ORDER

Mr.S.Dhayalan, learned Government Advocate takes notice for the respondent in all the writ petitions.

2. By consent, the writ petition itself is taken up for final hearing.

3.The petitioner has come up with this present writ petition for a Writ of Certiorarified Mandamus, calling for the order of the respondent, bearing reference TNVAT 33465900009/14-15, dated 30.04.2018, quash the same and consequently, direct the respondent to de novo adjudicate the Assessment Notice, dated 04.04.2018 for the assessment year 2014-15.

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 Tamil Nadu Value Added Tax Act, 2006. The petitioner Company has filed their returns promptly and in respect of Income Tax claim, there was a pre-revision notice issued by the respondent in respect of assessment year 2014-15 on 28.11.2017. On 06.12.2017, the petitioner company sought for certain details from the respondent. The personal hearing was afforded on 08.01.2018 by the respondent. It appears that the required details were not furnished by the respondent and therefore, the petitioner company repeatedly asking for furnishing of details and thereafter, submitted their interim reply. The matter stood thus, a revised notice was issued on 04.04.2018 calling for objections. Thereafter, the petitioner company had submitted their reply, dated 25.04.2018 seeking for certain documents and requested time for filing their objections on receipt of documents after fifteen days. This letter was received by the respondent on 26.04.2018. However, without providing the details, the impugned order came to be passed on 30.04.2018.

5.A perusal of the impugned order shows that the personal hearing given to the petitioner company on the face of the pre-revision notice dated 28.11.2017, was considered and there is no reference to the opportunity granted to the petitioner company, pursuant to the revised notice dated 04.04.2018. It is highly improbable for the respondent to conduct a personal hearing on 13.03.2018, for the revised notice issued on 04.04.2018. Therefore, the order passed by the respondent is without application of mind. It is crystal clear that the opportunity of filing objection and personal hearing were not afforded to the petitioner company. The violation of principles of natural justice is at large in the case of the petitioner. Under such circumstances, this Court is inclined to set aside the impugned order.

6.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:-

<u>Denial of Personal hearing:</u>

"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."**

7.Accordingly, the impugned order is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is directed to furnish the documents requested by the petitioner company by their letter dated 25.04.2018 and on such receipt of the documents from the respondent, the petitioner company shall submit their objection within fifteen days and thereafter, the respondent shall decide the matter on merits and after affording personal hearing to the petitioner company, within one month thereafter.

8.The Writ Petition is disposed of with the above observations. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

The State Tax Officer,
Tiruchendur,
Tamilnadu.

+1CC to Mr.C.Seethapathy Advocate in SR.No.69670.

+1CC to Special Government Pleader in SR.No.69780.

RJ2
DS/SV/SAR-2 :19.07.2018: 3P/4C

W.P.(MD).No.13437 of 2018
25.06.2018