BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.12492 of 2018 and
W.M.P.(MD)No.11363 of 2018

Tvl.Ratna Stores,
Represented by its Proprietor,
R.Somasundaram : Petitioner

Vs.

The Assistant Commissioner (ST),
Thoothukudi III Circle,
Commercial Tax Buildings,
Thoothukudi. : Respondent

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records in TIN 33935924534/2011-12, dated 26.03.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass a assessment order afresh after considering the representation dated 02.03.2017 and affording opportunity of being heard.

For Petitioner : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader

ORDER

Challenging the order passed by the respondent dated 26.03.2018 on the ground of violation of principles of natural justice, the petitioner is before this Court with the present Writ Petition.

2. The respondent issued a pre-revision notice on 15.02.2017 on the basis of the report of the Enforcement Wing, pursuant to their surprise inspection held at the place of business of the petitioner on 09.12.2014. During inspection, it was found that there is some variation between the turnover and the profit and loss statement. The petitioner has submitted his objections on 21.03.2017. The respondent, by his notices dated 12.04.2017 and 22.12.2017, provided an opportunity of personal hearing to the petitioner to submit his objections. However, in the impugned order, it was observed that the dealer, who received the notice, neither filed objection nor appeared for personal hearing. But, contrary to the said observation, in the subsequent paragraph, it was mentioned that the

dealer has submitted his objections on 21.03.2017 and proceeded on the basis of the details obtained from the web report.

3. The grievance of the petitioner is that even though he has filed his objections and appeared for personal hearing, the authorities have failed to apply their mind while passing the final order. Furthermore, surprisingly, the details obtained from the web report have been included without putting the petitioner on notice. Therefore, it amounts to violation of principles of natural justice.

4. On a cursory perusal of the pre-revision notice dated 15.02.2017, it could be seen that the contents of the pre-revision notice proposes only the variation between the turnover and profit and loss statement and nothing about the web report, whereas, the impugned order deals with several details about the materials found from the web. Apparently, the respondent has failed to apply his mind to the details and the objections filed by the petitioner and mechanically passed the impugned order, which, in my considered view, is violative of principles of natural justice and hence, on that ground, the impugned order is liable to be set aside.

5. In fine, the Writ Petition is allowed and the impugned order dated 26.03.2018 is set aside and the matter is remanded back to the respondent for consideration afresh. The respondent is directed to provide all the materials which were relied on by him for sending the revised proposal to the petitioner, call for objections and thereafter, decide the matter on merits and in accordance with law, after affording an opportunity of personal hearing to the petitioner. Such exercise shall be completed, within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

The Assistant Commissioner (ST),
Thoothukudi III Circle,
Commercial Tax Buildings,
Thoothukudi.

+ 1 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR No. 67854
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 68244

SML
TE/SV-MMS/SAR-1 : 21/06/2018 : 2P/4C

Order made in
W.P.(MD)No.12492 of 2018
Dated: 12.06.2018