BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 12.06.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.12493 to 12497 of 2018
and
W.M.P.(MD)Nos.11364 to 11368 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 W.Ps.

Vs.

State Tax Officer,
Ettayapuram,
Tuticorin District.
Pin: 628 902.
: Respondent in W.P.(MD)Nos.12493 to 12495 & 12497/2018

Commercial Tax Officer,
Ettayapuram,
Tuticorin District.
Pin: 628 902.
: Respondent in W.P.(MD)No.12496 of 2018

COMMON PRAYER IN W.P.(MD)Nos.12493 to 12495 of 2018: Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to TIN No.33841602409/2016-17, dated 23.04.2018, TIN No.33841602409/2015-16, dated 23.04.2018 and TIN No.33841602409/2012-2013, dated 25.04.2018, respectively passed by the respondent and quash the same as arbitrary and illegal.

COMMON PRAYER IN W.P.(MD)Nos.12496 and 12497 of 2018: Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records relating to Assessment Order CST Asst.No.764868/2014-15, dated 02.04.2018 and Assessment Order CST Asst.No.764868/2015-2016, dated 24.04.2018 respectively passed by the respondent and quash the same as arbitrary and illegal.

For Petitioner in all W.Ps. : Mr.Joseph Prabakar
For Respondent in all W.Ps. : Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

The grievance of the petitioner in all these Writ Petitions is that the respondent failed to afford personal hearing to the petitioner before passing the final assessment orders. Invariably, pre-assessment notices were given by the respondent calling for objections. Even though the petitioner submitted the required details on 18.01.2018, without considering the same and without affording an opportunity of personal hearing, the respondent in all the cases mechanically passed the impugned orders.

2. The learned counsel for the petitioner, in support of his contention, would rely on the following judgments of this Court:

(i) W.P.Nos.12980 to 12985 of 2017, dated 25.05.2017 [Bonfiglioli Transmissions Private Limited vs. Assistant Commissioner (complaint), Thirumudivakkam Assessment Circle, Chrompet, Chennai];

(ii) Apple India (P) Ltd., vs. Assistant Commissioner (CT), Chennai [2017(353) E.L.T. 206(Mad.)];

(iii) M/s.Albis Constructions Pvt. Ltd., vs. The Assistant Commissioner (CT)(FAC), Chennai [2017-VIL-168-Mad];

(iv) W.P.Nos.12964 to 12967 of 2017, dated 13.07.2017 [Bonfiglioli Transmissions Private Limited vs. Assistant Commissioner (CT), Thirumudivakkam Assessment Circle, Chrompet, Chennai];

(v) King Overseas vs. Asstt. Commr. of Cus. (Refunds), Chennai-I [2015(326) E.L.T.139(Mad.); and

(vi) M/s.Dhanvijay Textiles Pvt. Ltd., Represented by its Director, Sri.K.Vijayshankar vs. The Assistant Commissioner (CT)(FAC), Mettupalayam Circle, Mettupalayam [2018-TIOL-712-HC-MAD-VAT].

and would vehemently contend that affording an opportunity of personal hearing is mandatory before passing final assessment orders. However, the respondent in all the Cases, without doing so, has passed the impugned orders, which is in violation of principles of natural justice and, therefore, seeks the impugned orders to be set aside.

3. The learned Special Government Pleader would contend that even though ample time is given to the petitioner, they have neglected to file their objections in time and appear before the authorities and they have not produced any record to substantiate their case and, therefore, the orders passed by the respondent are justifiable and the same need no interference.

4. I have considered the rival contentions.

5. It is mandatory to afford personal hearing before passing final assessment orders pursuant to the pre-revision notices. The authority ought to have issued an independent notice of hearing fixing a specific date for appearance irrespective of the fact as to whether she receives objections or not.

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.
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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."

7. On a perusal of the impugned orders, it is crystal clear that the respondent failed to afford personal hearing and mechanically passed orders. In such circumstances, the finding of the Division Bench of this Court cited supra is squarely applicable to the case on hand. Therefore, the impugned orders passed by the respondent are violative of principles of natural justice and hence, the same are liable to be set aside.

8. In the result, the Writ Petitions are allowed and the impugned orders passed in the above Writ Petitions dated 23.04.2018, 23.04.2018, 25.04.2018, 02.04.2018 and 24.04.2018, respectively are set aside. The matters are remanded back to the respondent for fresh consideration. The respondent in all the Cases is directed to furnish the details which were relied on by them in issuing the proposals through pre-assessment notices, call for objections and thereafter, afford an opportunity of personal hearing to the petitioner before passing orders. The respondent is also directed to

complete the process, within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (Crl. Side)

/True Copy/

Sub Assistant Registrar

To

1.The State Tax Officer,
Ettayapuram,
Tuticorin District.
Pin: 628 902.

2.The Commercial Tax Officer,
Ettayapuram,
Tuticorin District.
Pin: 628 902.

+5CC to Mr.Joseph Prabakar, Advocate
in SR.NOs.67855,67856,67857,67858,67859.

SML
DS/SKN-RSK/SAR-4 :13.06.2018: 4P/8C

Common Order made in
W.P.(MD)Nos.12493 to 12497 of 2018
Dated: 12.06.2018