BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition(MD)No.12491 of 2018
and
W.M.P.(MD).No.11362 of 2018

Tvl.M.S.P.M.Chandharan Sons,
represented by its Partner C.Vinodhan,
No.134, Alagarkovil Road,
Melur. ... Petitioner

Vs.

The State Tax Officer,
Commercial Tax Buildings,
Melur. ... 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 33694940698/2015-16 dated 26.04.2018 issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass an assessment order afresh, after considering the representations and affording opportunity of being heard.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.B.Baghavathy
Government Advocate

O R D E R

The petitioner is the wholesale distributor for ITC, GSK and other products and he is the registered dealer under TNVAT Act. For the assessment year 2015 - 2016, a revision notice was issued by the respondent on 01.11.2017. In response to the revision notice, the petitioner has filed his objections on 08.11.2017. Again, a revised notice was issued on 21.12.2017 by the respondent. Thereafter, the petitioner submitted two representations dated 03.01.2018 and 20.04.2018. Considering the objections, the respondent passed the final orders, in which, it was observed by the respondent as under:

> “Their explanations were verified with the connected records. The actual stock on the date of inspection is Rs.8,13,885/- and not Rs.11,21,075/- now furnished by them. The actual stock to the above value has been vouchasafed by them before the inspecting officer at the time of inspection through their statement. Hence, the explanations are not convincing and the proposals in this aspect are also confirmed.”

Aggrieved over the said order, the petitioner is before this Court.

2. According to the petitioner, the order passed by the respondent is a non-speaking order and in violation of principles of natural justice.

3. The learned counsel for the respondent would contend that the revised notice was issued on 21.12.2017 and opportunity was given to the petitioner to submit his objections within 15 days and the petitioner submitted two representations dated 03.01.2018 and 20.04.2018. After considering the objection only, the order is passed. The actual stock on the date of inspection was accepted by the petitioner and he has given a voluntary statement and now he cannot go back on it. Therefore, the order passed by the respondent is very much in order and does not require any interference.

4. Heard the submissions made on either side and perused the materials placed before this Court.

5. Admittedly, the objections raised by the petitioner were not discussed by the respondent, but it was brushed aside on one reason that it is not convincing. The other reason being that they have not objected the value of the actual stock before the inspection. But the detailed counter affidavit filed by the respondent does not disclose the reason as to why the personal hearing was not given to the petitioner. It is well settled that affording personal hearing is mandatory before passing final orders.

6. In the instant case, the revised notice was issued on 21.12.2017 and the petitioner had submitted his objections on 03.01.2018 and 20.04.2018. The impugned order was passed within six days from the date of receipt of the objections from the petitioner. The procedure of passing final orders is repeatedly clarified by the Head of the Department and standard instructions were given as to personal hearing. It is categorically observed that whether the Dealer files his objections or not, the Assessing Officer shall afford an opportunity of personal hearing before passing final orders. Since the impugned order came to be passed within six days from the date of receipt of the objections, it is highly improbable that the respondent fixed a date for personal hearing and called the petitioner to appear before him on the said date.

7. The Honourable 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 follows:

<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 in such cases, unless specifically excluded by a statutory provision."

8. Therefore, it is mandatory to adhere to the principles of natural justice by affording an opportunity of personal hearing before taking a decision, but without affording an opportunity, the impugned order is passed, which amounts to violation of principles of natural justice. In the instant case also that opportunity of personal hearing is denied to the petitioner. Therefore, the impugned order dated 26.04.2018 is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner and pass orders within a period of one month from the date of receipt of a copy of this order. This writ petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

The State Tax Officer,
Commercial Tax Buildings,
Melur.

+1cc to Special Government Pleader, SR.No. 72275
+1cc to M/S.S.Karunakar, Advocate SR.No. 72081

W.P.(MD)No.12491 of 2018
10.07.2018

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JM/SKN RSK/SAR 4/27.07.2018/3P/4C