BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13075 to 13079 of 2018
and W.M.P.(MD) Nos.11951 to 11955 of 2018

Royal Auto Agencies
Represented by its Proprietrix
A.Rajeswari .. Petitioner in All cases.

Vs.

The State Tax Officer,
Nagercoil Tower Junction,
Mead Street, Nagercoil,
Kanyakumari District. ... Respondent in All cases.

COMMON PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in No.33206143040/2010-11, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 respectively dated 04.04.2018 and quash the same and consequently direct the respondent to grant to the petitioner sufficient opportunity to submit reply to the pre-assessment notice dated 12.03.2018.

In all writ petitions:

For Petitioner : Mr.M.Azeem

For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader

COMMON ORDER

The petitioner company in all the writ petitions is the dealer in two wheeler spares. The petitioner company was registered under Tamilnadu VAT Act and the petitioner company has filed returns in respect of business transaction regularly. The enforcement wing of the Department conducted an inspection in the place of the business on 12.08.2014 and obtained a statement from the husband of the Proprietrix of the company.

2. Based on the statement, pre-revision notice was issued. The petitioner was directed to submit reply. But however, the petitioner has not submitted any objections and accordingly, assessment orders were passed by the respondent, which are under challenge in the writ petitions.

3. According to the learned counsel for the petitioner, the petitioner has orally sought permission for filing objections, but, the same was not granted. Further more, the petitioner was not given an opportunity of personal hearing and therefore, the order is in violation of principles of natural justice.

4. From the reading of the impugned order, it is seen that the inspection was done by Enforcement Wing officials. Pursuant to the same, pre-revision notice was issued for consecutive years. In the impugned orders, the Assessing Authorities have stated that the dealer has not filed any objection and hence, the proposals are confirmed.

5. It has been time and again laid down by the various judgments of this Court that whether objections are filed or not, the opportunity of personal hearing should be afforded to the dealers before taking final decision.

6. The Hon'ble Division Bench of this Court in W.A.(MD) No.234 to 240 of 2015(In 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 as follows:

> 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 Authoirty 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.

7. Therefore, it is well settled that in the event of non-filing of objection, the Assessment Authority is duty bound to issue notice to the dealer calling upon him to appear for personal hearing fixed by him on a specific date. When opportunity is not given, it will amount to violation of principles of natural justice.

8. In the instant case, such opportunity is not given to the dealer and the impugned order is passed in violation of principles of natural justice.

9. This Court, after considering the facts and circumstances of the case, is inclined to set aside the impugned order and remand back the matter to the respondent for consideration.

10. The respondent shall give an opportunity of personal hearing and pass orders on merits within a period of one month from the date of receipt of a copy of this order.

11. In the result, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

The State Tax Officer,
Nagercoil Tower Junction,
Mead Street, Nagercoil,
Kanyakumari District.

+2CC to Mr.S.KARUNAKAR, Advocate, SR.Nos.68961,68962,
+1CC to the Special Government Pleader SR.No.69113

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