BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 20.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13080 to 13085 of 2018
and
W.M.P.(MD) Nos.11956 to 11961 of 2018

Lakshmi Warping & Sizing
Represented by its Proprietor
K.Rajamonickam .. Petitioner in all the petitions

Vs.

The Commercial Tax Officer,
Nagercoil-Rural,
Meads Street,
Nagercoil 629 001
Kanyakumari District. ... Respondent in all the petitions

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 TIN 33456120350/2008-09 dated 26.03.2018 and quash the same and consequently direct the respondent to consider the reply dated 28.02.2018 and grant to the petitioner a personal hearing and then pass orders according to law.

Prayer in WP(MD). 13081/ 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN 33456120350 / 2009-10 dated 26/03/2018 and quash the same and consequently direct the respondent to consider the reply dated 28/02/2018 and grant to the petitioner a personal hearing and then pass orders according to law .

Prayer in WP(MD). 13082/ 2018 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN No.33456120350/2010-11 dated 26.03.2018 and quash the same and consequently direct the respondent to consider the reply dated 28.02.2018 and grant to the petitioner a personal hearing and then pass orders according to law .

Prayer in WP(MD). 13083/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of

Certiorarified Mandamus to call for the records on the file of the respondent in TIN No.33456120350/2011-12 dated 26.03.2018 and quash the same and consequently direct the respondent to consider the reply dated 28.02.2018 and grant to the petitioner a personal hearing and then pass orders according to law .

Prayer in WP(MD). 13084/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN 33456120350 / 2012-13 , dated 26/03/2018 and quash the same and consequently direct the respondent to consider the reply dated 28/02/2018 and grant to the petitioner a personal hearing and then pass orders according to law .

Prayer in WP(MD). 13085/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN No.33456120350/2013-14 dated 26.03.2018 and quash the same and consequently direct the respondent to consider the reply dated 28.02.2018 and grant to the petitioner a personal hearing and then pass orders according to law .

In all writ petitions:

For Petitioner	:	Mr.M.Azeem
For Respondent	:	Mr.S.Dhayalan Government Advocate

C O M M O N O R D E R

The petitioner company in all the writ petitions is the dealer in Cotton Hank Yarn. The petitioner company was registered under Tamilnadu VAT Act and filed returns in respect of business transaction. Originally pre-revision notice was issued by the respondent in respect of assessment year 2008-2009 to 2013-2014 dated 09.03.2015.

2. The petitioner sought for certain clarification under Section 48A of the Tamilnadu VAT Act. Thereafter, the respondent has issued revised pre-assessment notice dated 01.02.2018. The petitioner has filed his reply on 28.02.2018 and sought for one month time for getting further clarification from the higher authorities. However, the respondent, without waiting for clarification, passed the impugned order on 26.03.2018.

3. It is also submitted that by letter dated 18.06.2018 the Commissioner of Commercial Tax has issued clarification and directed the Assessing Officer to defer all further proceedings till the clarification is issued. But the impugned order came to be passed even before receiving clarification from the Head of the Department without affording personal hearing, which is under challenge before this Court.

4. A perusal of the impugned order clearly shows that pre-revision notice was issued by the respondent on 01.02.2018 calling for objections and the respondent has filed a reply on 28.02.2018 requesting one months time. There is no reply as to the request made by the petitioner by his letter dated 28.02.2018 by the respondent. Without communicating as to whether the request was granted or rejected, the respondent has passed the impugned order as the petitioner has not filed his objections. It is also observed in the impugned order that the petitioner has not sought for personal hearing and also sought for certain clarification from the Head of the Department.

5. On perusal of the typed set of papers, it is seen that the Commissioner, Commercial Tax Department has issued clarification in ACAAR No.115/2015-16 (Acts Cell - II/3663/2016) dated 18.06.2018 and also the Additional Chief Secretary / Commissioner of Commercial Taxes, Chepauk, Chennai, in his letter No. Acts Cell II/3663/2016 dated 18.06.2018 directed the Joint Commissioner, Tirunelveli Division to issue necessary instructions to the Assessing Officer in order to ensure that the purpose of the clarification issued, consequent to the High Court order is attained, in order to bring the issue to finality by invoking Section 84 of TNVAT Act, 2006. But without waiting for the clarification and without affording any personal hearing, the impugned order came to be passed.

6. The Head of the Department i.e the Commissioner of Commercial Tax has given clear instruction as to personal hearing. It is mandated in Circular dated 3.2.2014 issued by him in Clause 3 (a), which is extracted hereunder:

> 3(a): Passing of Orders:
>
> Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:
>
> i) After issue of notice calling for the objections, if, any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may be only if, there exists a genuine reason.
>
> ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.
>
> Iii) As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not".

In view of the above, it is mandatory to afford personal hearing even if the objections are not filed by the dealer or not. But in the instant case, no personal hearing was given to the petitioner.

7. 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.

8. Under such circumstances, when the opportunity of personal hearing has not been given as mandated in the guidelines issued by the Head of the Department, the order of the respondent is vitiated for violation of principles of nature justice. Therefore, I am inclined to set aside the order passed by the respondent and remand the matter to the respondent for fresh consideration. The respondent is directed to consider the objections filed by the petitioner after affording personal hearing and pass orders within a period of one month from the date of receipt of a copy of this order.

9. In the result, the Writ Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(Crl.Side)

/True copy/

Sub Assistant Registrar

To,

The Commercial Tax Officer,
Nagercoil-Rural,Meads Street,
Nagercoil 629 001,Kanyakumari District.

+1cc to Special Government Pleader, SR.No.69132.
+2cc to M/s.S.Karunakar, Advocate, SR.No.68959 &68960.

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and W.M.P.(MD) Nos.11956 to 11961 of 2018
20.06.2018

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RAM/RSK/SAR 1/13.07.2018/4P/5C