BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.06.2018
CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13314 to 13321 of 2018
and W.M.P.(MD) Nos.12123 to 12139 of 2018

TVL Samy Stores
Rep. by its Proprietor
V.Periyasamy
No.1, Nawab Thottam,
Woraiyur,
Trichy -3. .. Petitioner in All cases.

Vs.

The Deputy Commercial Tax Officer,
Woraiyur Assistant Circle,
Trichy 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 calling for the records in TIN No.33503444238/2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 respectively dated 28.03.2018 on file of respondent and quash the same as illegal and against the principle of natural justice and consequently direct the respondent to follow the rule of law.

In all writ petitions:

For Petitioner : Mr.S.Sridhar

For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

C O M M O N O R D E R

The petitioner is the registered dealer under TN VAT Act, 2006 bearing registration No. TIN No.33503444238 for the assessment years 2009-10 to 2016-17. The petitioner Stores filed returns regularly. On 11.03.2016 and 31.05.2016, the Enforcement Wing of the respondent Department conducted an inspection at the place of business and directed the petitioner to produce the records pertaining the assessment years 2009-10 to 2016-17.

2. Thereafter, the respondent issued a pre-revision notice for revision of escaped turn over. The petitioner has filed objections on 23.12.2016, which culminated in the impugned order dated 28.03.2018 without considering the objections and without affording opportunity of personal hearing. Hence, the petitioner is before this Court.

3. On perusal of the objections filed by the petitioner, it is seen that there is very simple difference in value, whereas the Assessing Authority has passed the impugned order after a period of two years, which shows objections raised on five grounds and there is no reference as to when the objections were filed by the petitioner.

4. Be that as it may, from the consideration of the materials it is clearly seen that without affording an opportunity of personal hearing the impugned order came to be passed. 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. But in the instant case, no personal hearing was given to the petitioner.

5. 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.

6. The present case is squarely covered by the abovesaid Judgment of the Hon'ble Division Bench of this Court.

7. This Court, after considering the facts and circumstances of the case, is inclined to set aside the impugned orders and remand back the matter to the respondent for fresh consideration. The respondent is directed to peruse all the materials relied on by the petitioner, which were obtained through website. The respondent shall give an opportunity of personal hearing and pass orders on merits. In any event, the respondent shall pass orders within a period of two months from the date of receipt of a copy of this order.

8.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 Deputy Commercial Tax Officer,
Woraiyur Assistant Circle,
Trichy District.

+1CC to the Special Government Pleader SR.No.69358

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