BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.06.2018

CORAM

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13322 to 13326 of 2018
and W.M.P.(MD) Nos.12140 to 12144 of 2018

M/s.Raju Tiles
Represented by its Proprietor
R.Selvaraj,
43-B, Raj Bhavan,
7/423,N.G.O. Colony,
Nagercoil. .. Petitioner in all petitions

Vs.

The Commercial Tax Officer,
Nagercoil (Rural) Assessment Cicle,
Commercial Taxes Buildings,
Nagercoil. .. Respondent in all petitions

Prayer in W.P(MD)No.13322 of 2018:

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 33756125035/2010-11 dated 26.03.2018 and quash the same as arbitary, illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 19.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.JKM Solutions Private Limited reported in 2017(99) VST 343 (MAD) including the opportunity of personal hearing within such time as may be directed by this Court.

Prayer in WP(MD)No.13323/2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records in TIN 33756125035/2011-12 dated 26.03.2018 and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 19.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.JKM Solutions Private Ltd reported in 2017(99) VST 343 (MAD) including the opportunity of personal hearing within such time as may be directed by this court.

Prayer in WP(MD)No.13324/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records in TIN 33756125035/2012-13 dated 26.03.2018 and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 19.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.JKM Solutions Private Ltd reported in 2017(99) VST 343 (MAD) including the opportunity of personal hearing within such time as may be directed by this court.

Prayer in WP(MD)No.13325/2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records in TIN 33756125035/2013-14 dated 26.03.2018 and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 19.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.JKM Solutions Private Ltd reported in 2017(99) VST 343 (MAD) including the opportunity of personal hearing within such time as may be directed by this court.

Prayer in WP(MD)No.13326/ 2018 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a writ of Certiorarified Mandamus calling for the records in TIN 33756125035/2014-15 dated 26.03.2018 and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to furnish the records as sought for by the petitioner in his reply dated 19.03.2018 and pass a assessment order afresh in the light of the guidelines enunciated in the batch of Writ Petitions in the case of M/s.JKM Solutions Private Ltd reported in 2017(99) VST 343 (MAD) including the opportunity of personal hearing within such time as may be directed by this court.

In all writ petitions:

For Petitioner : Mr.S.Karunakaran (in all petitions)
For Respondent : Mr.A.Muthukaruppan
Additional Government Pleader
(in all petitions)

COMMON ORDER

The issue relates to pre-revision issued for the assessment years 2010-11 to 2014-15. The respondent issued a pre-revision notice on 09.01.2017. Thereafter, a revised notice was issued on

07.12.2017. The petitioner has filed an objection on 13.03.2018 and sought for certain documents and for personal hearing before passing the assessment year. However, on 26.03.2018,the impugned orders were passed by the respondent. Aggrieved over the lack of personal hearing and non supply of materials, the petitioner is before this Court.

2. A perusal of objections filed by the petitioner dated 19.03.2018, it is seen that there is a clear request from the side of the petitioner for personal hearing to elicit the facts on record. Within a period of one week, the respondent passed the impugned order without affording an opportunity of personal hearing.

3. This Court has repeatedly held that an opportunity of personal hearing is mandatory before passing the assessment orders and on filing or non-filing of objection, personal hearing must be fixed and communicated to the order and an order shall be passed only after completion of personal hearing.

4. 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.

5. Therefore, it is well settled that in the event of filing or 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.

6. 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.

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 shall furnish copies requested by the petitioner in his reply. The respondent shall give an opportunity of personal hearing and pass orders on merits. The petitioner is also directed to co-

operate with the speedy disposal of the matter. 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 (Crl.side)

/True Copy/

Sub Assistant Registrar

To

The Commercial Tax Officer,
Nagercoil (Rural) Assessment Cicle,
Commercial Taxes Buildings,
Nagercoil.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 69492
+ 1 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR No. 69504

CM
TE/SB/SAR-4 : 10/07/2018 : 3P/4C

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