BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13550 to 13553 of 2018
and
W.M.P(MD)Nos.12342 to 12345 of 2018

W.P(MD)No.13550 of 2018:

Tvl.Sri Adaikalam Kathal Bottle (P) Ltd.,
represented by its
Director,
S.Bose,
No.9/1, Municipal Building,
Kallukatti West,
Karaikudi,
Sivagangai District. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in Asst.No.33725483445/2012-13 ante-dated as 24.04.2018 and quash the same and direct the second respondent to re-do the assessment after conducting detailed enquiry and by giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.B.Bhagavathi
Government Advocate

W.P(MD)No.13551 of 2018:

Tvl.Sri Adaikalam Kathal Bottle (P) Ltd.,
represented by its
Director,
S.Bose,
No.9/1, Municipal Building,
Kallukatti West,
Karaikudi,
Sivagangai District. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in Asst.No.33725483445/2013-14 ante-dated as 24.04.2018 and quash the same and direct the second respondent to re-do the assessment after conducting detailed enquiry and by giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.B.Bhagavathi
Government Advocate

W.P(MD)No.13552 of 2018:

Tvl.Sri Adaikalam Kathal Bottle (P) Ltd.,
represented by its
Director,
S.Bose,
No.9/1, Municipal Building,
Kallukatti West,
Karaikudi,
Sivagangai District. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in Asst.No.33725483445/2014-15 ante-dated as 24.04.2018 and quash the same and direct the second respondent to re-do the assessment after conducting detailed enquiry and by giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.B.Bhagavathi
Government Advocate

W.P(MD)No.13553 of 2018:
Tvl.Sri Adaikalam Kathal Bottle (P) Ltd.,
represented by its
Director,
S.Bose,
No.9/1, Municipal Building,
Kallukatti West,
Karaikudi,
Sivagangai District. ... Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2.The Commercial Tax Officer,
Karaikudi Assessment Circle,

Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi – 630 001. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in Asst.No.33725483445/2015-16 ante-dated as 24.04.2018 and quash the same and direct the second respondent to re-do the assessment after conducting detailed enquiry and by giving adequate opportunity to the petitioner.

For Petitioner : Mr.B.Rooban

For Respondents : Mr.B.Bhagavathi
Government Advocate

COMMON ORDER

Mr.B.Bhagavathi, learned Government Advocate takes notice for the respondents.

2. By consent, the writ petitions are taken up for final disposal.

3. The petitioner is a dealer registered under the Tamil Nadu Value Added Tax Act, 2006. He filed returns for the assessment years 2012-13, 2013-14, 2014-15 and 2015-16 respectively. Pre-revision notices were issued by the respondents on 22.02.2018 in respect of the said assessment years. The petitioner filed his objections on 26.04.2018. However, the impugned orders dated 24.04.2018 came to be served on 25.04.2018.

4. According to the petitioner, the second respondent has not only failed to consider his objections and afford personal hearing, but also to circumvent the proper procedure, ante-dated the impugned orders.

5. The learned Counsel for the petitioner would also submit that the assessment orders came to be passed on cross-verification of the web report and on the basis of the mismatch and therefore, it is mandatory for the assessing authority to conduct an enquiry and thereafter, issue proposal, as held by this Court in Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343.

6. I have considered the rival contentions.

7. Considering the materials on record and also on perusal of the impugned orders, it is seen that the impugned orders came to be passed without receiving any objections and without affording an opportunity of personal hearing. The Head of the Department has given clear instructions as to the procedures to be followed by the Assessing Officer. It is expected that the assessing authority shall issue notice calling for objections and if required, grant a further time for enabling the dealer to file his objections and after receipt of the objections, to afford an opportunity of personal hearing. The instructions with regard to the same would clearly mandate, whether objection was filed or not, it is mandatory to issue a notice of personal hearing. But, in the case on hand, the procedures are flouted by the respondents. Now, the petitioner is also seeking the records which were obtained through web report by the respondents.

8. In such circumstances, the impugned orders dated 24.04.2018 were passed in violation of principles of natural justice. Further, the request of the petitioner is that the assessing authority shall follow the dictum of this Court in Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343 that before issuing the proposals, the authority shall convince himself by conducting an enquiry as to the mismatch.

9. Therefore, while setting aside the impugned orders in Asst.No.33725483445/2012-13; Asst.No.33725483445/2013-14; Asst.No.33725483445/2014-15 and Asst.No.33725483445/ 2015-16, dated 24.04.2018 and remanding the matters to the second respondent, a direction is issued to the second respondent to follow the guidelines given in the judgment of this Court in Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in 2017 (99) VST 343 and provide necessary documents to the petitioner for the purpose of filing his objections. After receiving the objections, the second respondent shall fix a date for personal hearing and pass orders on merits. Such exercise shall be completed within two months from the date of receipt of a copy of this order.

10. Accordingly, all the writ petitions are disposed of as above. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar (WRITS)

/True Copy/

Sub Assistant Registrar

To

1. The Commissioner of Commercial Taxes,
Office of the Principal Secretary / Special Commissioner of Commercial Taxes,
Ezhilagam,
Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Karaikudi Assessment Circle,
Commercial Tax Office,
No.50/52, Jawahar Street,
Karaikudi - 630 001.

+1CC to Mr.B.Rooban Advocate in SR.No.69725.

+1CC to Special Government Pleader in SR.No.69954.

RSB
DS/PN/SAR-2 :13.07.2018: 6P/5C

W.P(MD)Nos.13550 to 13553 of 2018
and
W.M.P(MD)Nos.12342 to 12345 of 2018
26.06.2018