BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13502 to 13504 of 2018
and
W.M.P(MD)Nos.12304 to 12306 of 2018

W.P(MD)No.13502 of 2018:

Tvl.Singapore Plaza,
represented by its
Proprietor,
A.Kanavapeer,
No.58, Main Road,
Batlagundu. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Nilakottai. ... Respondent

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 on the file of the respondent in TIN No:33605301442/2014-15, dated 26.07.2017 and quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show-cause notice, dated 22.03.2017 and after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.S.Dhayalan
Government Advocate

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W.P(MD)No.13503 of 2018:

Tvl.Singapore Plaza,
represented by its
Proprietor,
A.Kanavapeer,
No.58, Main Road,
Batlagundu. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Nilakottai. ... Respondent

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 on the file of the respondent in TIN No:33605301442/2015-16, dated 26.07.2017 and quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show-cause notice, dated 22.03.2017 and after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.S.Dhayalan
Government Advocate

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W.P(MD)No.13504 of 2018:

Tvl.Singapore Plaza,
represented by its
Proprietor,
A.Kanavapeer,
No.58, Main Road,
Batlagundu. ... Petitioner

Vs.

The Deputy Commercial Tax Officer,
Nilakottai. ... Respondent

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 on the file of the respondent in TIN No:33605301442/2016-17, dated 26.07.2017 and quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show-cause notice, dated 22.03.2017 and after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.S.Dhayalan
Government Advocate

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COMMON ORDER

Mr.S.Dhayalan, learned Government Advocate takes notice for the respondent.

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

3. The petitioner was served with revision notices dated 22.03.2017 for certain defects. The main defect was that Annexure -II of Form-I Returns filed by the dealer revealed that some of the dealers have not accounted for the sales which were effected by the petitioner. In the impugned orders, it was mentioned that Annexure was enclosed along with the revision notice. However, a reference to the Annexure in the revision notices does not disclose any detail. The final reminder notices were also issued to the dealer on 05.04.2017. But the dealer failed to file objections and hence, the impugned orders came to be passed.

4. The grievance of the petitioner is that the Annexure to the revision notices does not contain any detail to submit an effective objection with regard to the same. Furthermore, no personal hearing was afforded to the petitioner. Therefore, the impugned orders are liable to be set aside.

5. I have considered the rival contentions.

6. In similar circumstances, a Division Bench of this Court in a batch of Writ Appeals in ***W.A(MD).Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018, has held as under:-

Denial of Personal hearing:

> "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 authority 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.
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> 11.The Hon'ble Supreme Court in *Swami Devi Dayal Hospital and Dental College Vs. The Union of India and others [2013 (10) Scale 608]* observed that even in the absence of a specific provision of giving hearing, the hearing is required is required in such cases, unless specifically excluded by a statutory provision."

7. On a perusal of the impugned orders, it is crystal clear that the respondent failed to afford personal hearing and furthermore, the Annexure to the revision notice does not contain any detail about the documents relied on by the respondent obtained through web report. In such circumstances, the finding of the Division Bench of this Court cited *supra* is squarely applicable to the case on hand. Therefore, the impugned orders passed by the respondent are violative of principles of natural justice and hence, they are liable to be set aside.

8. Accordingly, the impugned orders passed by the respondent in TIN No:33605301442/2014-15; TIN No:33605301442/2015-16 and TIN No:33605301442/2016-17, dated 26.07.2017, are set aside and the matters are remanded back to the respondent for fresh consideration. The respondent is directed to furnish the details with regard to the Annexure to the revision notices mentioned in the impugned order and also the documents relied on by the respondent obtained through web report and afford an opportunity of personal hearing to the petitioner and thereafter, pass orders on merits and in accordance with law within a period of one month from the date of receipt of a copy of this order.

9. In the result, these writ petitions are disposed of as above. No costs. Consequently, the connected writ miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

To

The Deputy Commercial Tax Officer,
Nilakottai.

+ 1 cc TO Mr.A.Chandrasekaran , Advocate in SR No. 69723
+ 1 cc TO The Special Government Pleader in SR No. 69972

rsb
AE/SV/SAR1/09.07.2018/4P/4C

W.P(MD)Nos.13502 to 13504 of 2018
and
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26.06.2018