BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.13505 to 13510 of 2018
and
W.M.P(MD)Nos.12307 to 12312 of 2018

M/s.Charminar Marketing,
represented by its
Partner,
H.Raja Mohammed,
No.11-A, First Cross,
Sundar Nagar,
Trichy – 620 021. ... Petitioner in all cases

Vs.

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

2. The Assistant Commissioner (CT)/FAC,
   Srirangam Assessment Circle,
   Commercial Tax Buildings,
   Trichy. ... Respondents in all cases

COMMON 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 in TIN No.33733464204/2011-12, 2012-13, 2013-14, 2014-15, 2015-16,& 2016-17 dated 28.02.2018 respectively issued by the second respondent and quash the same as arbitrary, illegal, without jurisdiction, clear violation of the circular issued by the first respondent in Circular No.29/2015 D3/22678/2015, dated 11.08.2015 and against the judgment of the Honourable Apex Court in M/s.Southern Motors v. State of Karnataka reported in (2017) 3 SCC 467 and direct the respondent to pass order afresh after affording opportunity of personal hearing within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar
For Respondents : M/s.B.Bhagavathi
(in all cases) Government Advocate

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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 was served with revision notices dated 04.10.2017 for certain defects. The main defect was that the dealer has received commission amounts, for which, no supporting documents have been produced. Hence, the impugned orders came to be

4. The grievance of the petitioner is that the second respondent did not furnish the details with regard to the defects pointed out in the revision notices and also the documents relied on by the second respondent obtained through web report. Moreover, 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.

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 second respondent failed to afford personal hearing and furthermore, the revision notices did not contain any details with regard to the defects pointed out in the revision notices and 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 second respondent in TIN No.33733464204/2011-12; TIN No.33733464204/2012-13;TIN No.33733464204/2013-14; TIN No.33733464204/2014-15; TIN No.33733464204/2015-16 and TIN No.33733464204/2016-17, dated 28.02.2018, are set aside and the matters are remanded back to the second respondent for fresh consideration. The second respondent is directed to furnish the details with regard to the defects pointed out in the revision notices and also the documents relied on by the second 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(AS)

/True Copy/

Sub Assistant Registrar

To

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

2. The Assistant Commissioner (CT)/FAC,
   Srirangam Assessment Circle,
   Commercial Tax Buildings,
   Trichy.

+2cc to Mr.S.Karunakar, Advocate Sr.No.69870,69871
+1cc to Spl.Government Pleader Sr.No.69953

RSB

VB/RSK/SAR4/09.07.2018/4P/6C

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