BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.13524 of 2018
and
W.M.P(MD)No.12330 of 2018

P.Nedunchezhia Pandian, ... Petitioner

Vs.

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

2. The Commercial Tax Officer (FAC),
   West Veli Street Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai – 625 020. ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33935022822/2013-14, dated 28.03.2018 and quash the same.

For Petitioner : Mr.Raja.Karthikeyan

For Respondents : Mr.A.Muthukaruppan
Additional Government Pleader

* * * * *

ORDER

Mr.A.Muthukaruppan, learned Additional Government Pleader takes notice for the respondents.

2. By consent, the writ petition is taken up for final disposal.

3. The petitioner was served with revision notice dated

15.02.2018 for certain defects. The petitioner filed his reply dated 27.03.2018 requesting the second respondent to furnish the details with regard to the revision notice. However, without considering the same, the impugned order came to be passed.

4. The grievance of the petitioner is that the revision notice does not contain any detail about the documents relied on by the respondent obtained through web report to submit an effective objection with regard to the same. Furthermore, no personal hearing was afforded to the petitioner. Therefore, the impugned order is 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 order, it is crystal clear that the petitioner has given a representation dated 27.03.2018 seeking personal hearing to explain the facts stated in his objections. Having referred to the same in the impugned order, on the very next day, i.e., 28.03.2018, without passing any orders on the request of the petitioner either to accept or reject the same, the impugned order came to be passed. Further, the second respondent failed to afford personal hearing to the petitioner and furthermore, the revision notice does not contain any detail about the documents relied on by the second 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 order passed by the second respondent is violative of principles of natural justice and hence, the same is liable to be set aside.

8. Accordingly, the impugned order passed by the second respondent in TIN: 33935022822/2013-14, dated 28.03.2018, is set aside and the matter is remanded back to the second respondent for fresh consideration. The second respondent is directed to furnish the details about 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, this writ petition is disposed of as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar

To

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

2. The Commercial Tax Officer (FAC),
   West Veli Street Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai - 625 020.

+ 1 cc TO Mr.B.Rooban , Advocate in SR No. 69724
+ 1 cc TO The Special Government Pleader in SR No. 69980

rsb
AE/SV/SAR1/09.07.2018/3P/5C

W.P(MD)No.13524 of 2018
and
W.M.P(MD)No.12330 of 2018
26.06.2018