BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **30.10.2018**

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.21782 to 21789 of 2018

and

W.M.P.(MD)Nos.19714 to 19721 of 2018

M/s.Iyyappan & Sons,
Dealer-Bharat Petroleum Corporation Limited,
Rep. by its Proprietor
Tmt.Iyyammal .. Petitioner in all WPs

Vs.

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

2. The Commercial Tax Officer,
   Chokkikulam Assessment Circle,
   Commercial Tax Buildings,
   Madurai - 20. .. Respondents in all WPs

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS calling for the records in TIN 33485002457 / 2007-08 to 2014-15, respectively, dated 30.11.2016 issued by the 2nd respondent and quash the same as arbitrary, illegal, without jurisdiction, clear violation of the circular issued by the 1st respondent in Circular No.29/2015 D3/22678/2015 dated 11.08.2015 and against the Judgment of Hon'ble Apex Court in the case of 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.

For Petitioner : Mr.S.Karunakar (In all WPs)
For Respondents : Mr.D.Muruganantham, Additional Government Pleader (In all WPs)

COMMON ORDER

These writ petitions are directed against the impugned orders passed by the second respondent in TIN 33485002457 / 2007-08 to 2014-15, respectively, dated 30.11.2016, on the ground of violation of principles of natural justice.

2. As the issue involved in all the cases are similar in nature, they are disposed of by way of this common order.

3. The petitioner before this Court is a dealer for M/s.Bharat Petroleum Corporation Limited (BPCL) and an assessee on the file of the second respondent. The subject assessment years are 2007-08 to 2014-15, for which, the petitioner filed their returns, on time and they were deemed to have been assessed in view of Section 22 (2) of the TNVAT Act. However, on on the basis of the inspection report and further scrutiny of returns, the authorities found some discrepancies in the tax returns. Pursuant to the same, the second respondent has issued pre-revision notice for the subject assessment years dated 30.08.2016. The petitioner, thereafter, submitted their detailed objections on 14.09.2016. The grievance of the petitioner is that without properly considering the same and without affording an opportunity of personal hearing, the present impugned orders dated 30.11.2016 came to be passed and therefore, the petitioner is before this Court by way of the present writ petitions.

4. Learned Additional Government Pleader, on the other hand, would submit that the petitioner was issued with pre-revision notices dated 30.08.2016, for all the assessment years and the petitioner has also made their detailed representation dated 14.09.2016 for the same. After elaborate consideration of all the objections, the present impugned orders dated 30.11.2016 came to be passed. He would further submit that after a lapse of two years from the date of passing of the impugned orders, the present writ petitions were filed and therefore, he prays for dismissing the present writ petitions.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. The service of pre-revision notice as well as the reply cum objections of the petitioner are not in dispute. The only question to be decided is as to whether the second respondent, on the basis of the objections alone, can pass the impugned order, without affording an opportunity of personal hearing.

7. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the **Justice Ramanujam Committee**, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner and whether objections were received or not.

8. In this context, a Division Bench of this Court in an unreported decision in W.A.(MD)No.234 to 240 of 2015 **(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 that failure to submit objection to the pre-assessment notice would not

give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

> *"10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notice. 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 order 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."*

In the case on hand, though objections were filed, opportunity of personal hearing was not granted. Since there is a violation of principles of natural justice, even though the impugned orders were passed before two years, this Court is inclined to interfere with the same.

9. In such a view of the matter, the impugned orders passed by the respondent in TIN 33485002457 / 2007-08 to 2014-15, respectively, dated 30.11.2016 are set aside as violative of principles of natural justice and the matter is remanded back to the second respondent for fresh consideration. Since the service of notice and the objections of the petitioner by way of representation are not in dispute, the second respondent is hereby directed to fix a specific date for hearing, within a period of two weeks from the date of receipt of a copy of this order and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the second respondent and put forth their contentions, along with supporting documents, if any and after hearing the petitioner, the second respondent shall pass appropriate reasoned orders, purely on merits, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the second respondent shall record the same and pass orders, in accordance with law.

10. These writ petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

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

2. The Commercial Tax Officer,
   Chokkikulam Assessment Circle,
   Commercial Tax Buildings,
   Madurai - 20.

+1cc to Spl.Government Pleader Sr.No.93356
+1cc to Mr.S.Karunakar, Advocate Sr.No.93204

GK

VB/PM/SAR4/04.12.2018/4P/5C

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