BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU
W.P.(MD)No.21834 of 2018
and
W.M.P.(MD)No.19752 of 2018

Tvl.Nataraja Oil Mills Pvt. Ltd.,
Rep. by its Director,
N.Senthil Nathan .. Petitioner

Vs.

The Commercial Tax Officer,
Melur Assessment Circle,
Melur. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARI, calling for the records on the file of the respondent in TIN:33774940751/2011-12 dated 17.09.2018 and quash the same as illegal, invalid and against the Principles of Natural Justice.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.A.Thiyagarajan, Government Advocate

****

ORDER

This writ petition is directed against the impugned order passed by the respondent, dated 17.09.2018, on the ground of violation of principles of natural justice.

2. The petitioner is a manufacturer of edible oil and trader in pulses and grams, etc. He is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 [in short 'TNVAT Act'] and the Central Sales Tax Act, 1956 [in short 'CST Act'] and has been filing the returns properly. The returns filed for the assessment year 2011-12 were deemed to have been assessed in view of Section 22(2) of the TNVAT Act. However, on 02.11.2012, 03.11.2012 and 05.11.2012, the officials of the Enforcement Wing of the Department conducted a surprise inspection in the place of business of the petitioner. On the basis of the inspection report and details obtained from the web, the authorities found some discrepancies in the tax returns. Pursuant to the same, the respondent has issued a revision notice dated 02.04.2018. The petitioner submitted his objections on 06.06.2018. The assessing authority has dropped certain proposals and confirmed some other proposals. While confirming the said proposals, the assessing authority has not taken into consideration the request of the petitioner for personal hearing as well as to summon the sellers for the purpose of cross-examination as per Sections 81 and 82 of the TNVAT Act and proceeded to pass orders without accepting the request of the petitioner. Therefore, the petitioner is before this Court.

3. Learned Government Advocate, on the other hand, would submit that the petitioner was issued with a pre-revision notice dated

02.04.2018, for which, the petitioner has made a detailed representation dated 06.06.2018. After elaborate consideration of the said reply dated 06.06.2018, the present impugned order dated 17.09.2018 came to be passed and therefore, he prays for dismissal of the present writ petition.

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

5. On perusal of the objections filed by the petitioner to the revision notice issued by the respondent, dated 02.04.2018, it is seen that the petitioner has sought for an opportunity of being heard to explain the real facts. The petitioner has also sought for permission from the respondent to issue summons to their sellers to get necessary details and permit the petitioner to cross-examine them as per Sections 81 and 82 of the TNVAT Act. However, the respondent considering the objections filed by the petitioner, passed the order impugned dated 17.09.2018.

6. Even though the petitioner has given elaborate submissions and objections, the impugned order does not appear to have dealt with the objections elaborately. In many of the proposals, the objections were rejected on the ground that the required materials were not available with the authority. The case laws submitted by the petitioner were also not considered while taking a decision.

7. Moreover, there is nothing on record to show that the materials, on the basis of which the respondent proposed to re-assess, were supplied to the petitioner and he was sought to explain the same. On the other hand, the dealer himself made a request to summon the sellers for the purpose of cross-examining them to elucidate the fact. He had also requested for personal hearing to explain the real facts. When a specific request is made by the petitioner for personal hearing, it is mandatory to provide such an opportunity before passing the assessment order.

8. 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. Though in the case on hand, opportunity of personal hearing was requested, the same was not granted.

9. 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."*

10. In such a view of the matter, this Court is inclined to set aside the impugned order passed by the respondent in TIN:33774940751/2011-12, dated 17.09.2018 as violative of principles of natural justice and accordingly, the same is set aside and the matter is remanded back to the respondent for fresh consideration. The respondent is hereby directed to issue fresh notice along with the details obtained from the web which are relied on for passing the assessment order in respect of confirmed proposals, to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receipt of the same, the petitioner is directed to submit his complete objections along with the records to the respondent within a period of two weeks thereafter. On receipt of the objections from the petitioner, the respondent shall fix a specific date for hearing, within a period of two weeks and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent and put forth his contentions and after hearing the petitioner, the respondent shall pass appropriate 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 respondent shall record the same and pass orders, in accordance with law.

11. This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar(CS-II)

To
The Commercial Tax Officer,
Melur Assessment Circle,Melur.
+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.91880
+1cc to M/s.Special Government Pleader,SR.No. 92190

W.P.(MD)No.21834 of 2018
and
W.M.P.(MD)No.19752 of 2018

GK
KK/RP/SAR-2/04.12.2018/3P-4C