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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 25.10.2018
CORAM:
THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.21835 to 21841 of 2018
and
W.M.P.(MD)Nos.19753 to 19759 of 2018

Tvl.Lakshmi Traders,
Rep. by its Proprietor,
K.Sureshkumar .. Petitioner in all WPs

Vs.

The State Tax Officer (Main),
Dindigul (Rural) Assessment Circle,
Dindigul. .. Respondent in all WPs

COMMON PRAYER: Writ Petitions 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:33325262796/2007-08 to 2013-14, respectively, dated 28.09.2018 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
(In all WPs)

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COMMON ORDER

These writ petitions are directed against the impugned orders passed by the respondent, dated 28.09.2018, 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 is a dealer in edible oils and an assessee on the file of the respondent. The subject assessment years are 2007-08 to 2013-14, 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 11.11.2014, 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 revision notices for the subject assessment years during the months of April & May, 2015. The petitioner, thereafter, submitted their detailed objections on 19.07.2016. Based on the same, the assessing authority has dropped certain proposals and confirmed some other proposals. While confirming the said proposals, the assessing authority has not taken

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into consideration the request of the petitioner for personal hearing as well as the judgments cited by the petitioner and proceeded to pass orders. Therefore, the petitioner is before this Court by way of the present writ petitions.

4. Learned Government Advocate, on the other hand, would submit that the petitioner was issued with pre-revision notices during April / May, 2018, for all the assessment years and the petitioner has also made their detailed representation dated 19.07.2016 for the same. After elaborate consideration of all the objections, the present impugned orders dated 28.09.2018 came to be passed 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. On perusal of the objections filed by the petitioner to the revision notices issued by the respondent, it is seen that the petitioner has sought for an opportunity of being heard to explain the real facts. The petitioner has also relied on certain judgments in their favour. However, without considering the same, the respondent, based on the objections alone, has passed the orders impugned.

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

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."*

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9. In such a view of the matter, this Court is inclined to set aside the impugned orders passed by the respondent in TIN:33325262796/2007-08 to 2013-14, respectively, dated 28.09.2018 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. Since the service of notice and the objections of the petitioner by way of representation are not in dispute, the 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 respondent and put forth their contentions, along with supporting documents, if any 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.

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

Sd/
Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-I)

To

The State Tax Officer (Main),
Dindigul (Rural) Assessment Circle,
Dindigul.

+1cc to Mr.A.Chandrasekaran Advocate, SR.No.91879
+1cc to M/s.Special Government Pleader,SR.No. 92202

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and
W.M.P.(MD)Nos.19753 to 19759 of 2018
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