BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : **31.10.2018**
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.14550 to 14554 of 2018
and
W.M.P.(MD).Nos.13124 to 13128 of 2018

Tvl.Nylon Electric Store,
rep. by its Proprietor Bagadawarmal Jain,
89, A (II Floor), West Masi Street,
Madurai. ... Petitioner in all these petitions

Vs.

The Assistant Commissioner (ST) (FAC),
West Tower Street Circle,
Commercial Taxes Building,
Madurai. ... Respondent in all these petitions

COMMON PRAYER: Writ Petitions have been 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 33704802613/2008-09, TIN 33704802613/2009-10, TIN 33704802613/2010-11, TIN 33704802613/2011-12 and TIN 33704802613/2012-13 respectively dated 28.03.2018, issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment orders afresh, after considering the representation, dated 21.11.2014.

For Petitioner in all the petitions : Mr.S.Karunakar
For Respondent in all the petitions : Mr.D.Muruganandham, Additional Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 28.03.2018, passed by the respondent for the assessment years 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13 respectively.

2. Since the issue involved in these writ petitions are one and the same, these writ petitions were heard together and are disposed of by way of this common order.

3. The petitioner is a dealer in electrical goods and an assessee on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Pursuant to the VAT Audit, the respondent had issued revision of assessment notices, dated 13.10.2014, pointing out certain mismatches between Annexure – I of the buyer and Annexure II of the seller ie., other end dealer, for which the petitioner submitted his objections on 21.11.2014. After receipt of the objections, the matter was kept pending for about 3-1/2 years. Thereafter, the respondent, without providing an opportunity of personal hearing, has passed the impugned orders. Hence, the petitioner is before this Court challenging the said orders.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent and perused the records carefully.

5. Admittedly, a notice was issued by the respondent on 13.10.2014, for which objections were filed by the petitioner on 21.11.2014. But, after three years, without providing an opportunity of personal hearing, the respondent has passed the impugned orders. The Commissioner of Commercial Taxes, pursuant to the recommendations of the Hon'ble Justice Sri Ramanujam Committee, has laid down certain procedures to be followed by the assessing authority before passing final orders. That circular is binding on the respondent. It mandates that personal hearing shall be given even such an opportunity is asked or not. But, in contravention of the circular, without providing an opportunity of personal hearing after filing of the objections, the respondent has passed the impugned orders.

6. 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 the opportunity of personal hearing cannot be denied, even if the objections not filed. The relevant portion is extracted hereunder:

> *"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.

11. The 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 in such cases, unless specifically excluded by a statutory provision."

7. In this case, admittedly, the petitioner has submitted his objections. But, the respondent, after receipt of the said objections, has passed the impugned orders, without giving an opportunity of personal hearing. Therefore, the impugned orders are liable to be set aside.

8. In view of the above, the impugned orders, dated 28.03.2018, passed by the respondent are set aside and the matter is remanded back to the file of the respondent. The petitioner is directed to file his further objections, if any, within a period of two weeks from the date of receipt of a copy of this order. The respondent shall consider the said objections if any to be filed by the petitioner, provide an opportunity of personal hearing to the petitioner and then, pass reasoned orders on merits and in accordance with law, within a period of six weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records.

9. These Writ Petitions stand disposed of accordingly. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-II)

To

The Assistant Commissioner (ST) (FAC),
West Tower Street Circle,
Commercial Taxes Building,
Madurai.
+1 cc To Mr.S.Karunakar, ADVOCATE IN SR NO.93412
+1cc to Special Government Pleader Sr.No.93848
gcg
MK/ES/RSK/SAR 2/28.12.2018/3P/4C