BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.14939 to 14941 of 2018
and
W.M.P(MD)Nos.13499 to 13504 of 2018

M/s.DSRM Steels (P) Limited,
Rep. by its Managing Director
S.Mohanasundaram,
No.413/1, Karur Road,
Kulathur,
Dindigul - 624 005,
Dindigul District. .. Petitioner in all writ petitions

Vs.

The Commercial Tax Officer (Main),
Dindigul (Rural) Assessment Circle,
Dindigul,
Dindigul District. .. Respondent in all writ petitions

PRAYER in W.P.(MD).No.14939 of 2018: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33735263201/2013-14 dated 22.03.2018 and quash the same as illegal and against the provisions of Act.

PRAYER in W.P.(MD).No.14940 of 2018: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33735263201/2014-15 dated 22.03.2018 and quash the same as illegal and against the provisions of Act.

PRAYER in W.P.(MD).No.14941 of 2018: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorari to call for the records on the file of the respondent in its impugned proceedings made in TIN:33735263201/2015-16 dated 22.03.2018 and quash the same as illegal and against the provisions of Act.

For Petitioner
in all writ petitions : Ms.R.Hemalatha

For Respondent
in all writ petitions : Mr.A.Muthu Karuppan
Additional Government Pleader

COMMON ORDER

The petitioner company is the registered dealer under TNVAT Act, 2006, on the file of the respondent in TIN No.33735263201 for the assessment years 2013-14, 2014-15 and 2015-16 dealing with Iron and Steel merchandise. The petitioner filed returns regularly. On 11.04.2016, the Enforcement Wing of the respondent Department conducted an inspection at the place of business and certain alleged defects were pointed out by the officials. Pursuant to the same, the assessing authority has issued pre-revision notices regarding 5 proposals after granting time for filing objections pertaining to the assessment years 2013-14, 2014-15 and 2015-16.

2. The petitioner did not file the objection. Therefore, the proposals were confirmed by the impugned orders dated 22.03.2018 for the assessment years 2013-14, 2014-15 and 2015-16, without affording an opportunity of personal hearing. Hence, the petitioner is before this Court.

3. It is the grievance of the petitioner that the department has issued instructions for the assessing officers laying down the procedures for passing final orders. One of the instructions is that whether the dealers submits their objections or not, the personal hearing must be given to them. Therefore, it is mandatory to afford an opportunity of personal hearing even in cases where objections are not filed to the proposals. In the present case, the assessing officer has failed to afford that opportunity of personal hearing.

4. The learned counsel for the petitioner would also contend that the assessing officer is not bound to act as per the directions of the inspecting team. After receiving the report of the inspecting team, the authority concerned shall independently apply his mind in issuing the proposals. He shall not act as a postman, simply forwarding the defects pointed out by the inspecting team.

5. Be that as it may, from the consideration of the materials it is clearly seen that without affording an opportunity of personal hearing, the impugned order came to be passed. The Head of the Department i.e., the Commissioner of Commercial Tax has given clear instruction as to personal hearing. It is mandated in Circular dated 03.02.2014 issued by him in Clause 3(a), which is extracted hereunder:

"3(a): Passing of Orders:

Fifteen days time limit shall be given as reasonable opportunity to dealers before passing any order and it shall be reckoned from the date of service of the notice. No order shall be passed without being satisfied of the reasonable opportunity and adopting the following process:

i) After issue of notice calling for the objections, if, any further time is requested by the dealer within a period of fifteen days, it shall be examined and reply to be given to the dealer regarding granting of time or not as the case may

be only if, there exists a genuine reason.
ii) Objections filed by the dealer on the pre-assessment/revision notices shall be examined in each and every issue meticulously and speaking order shall be passed addressing the objections raised. In short, the speaking order which is complete shall be passed.
Iii) As the provision in the TNVAT Act stipulates the conditions of granting or personal hearing. It may be intimated in the notice and it shall invariably be afforded to the dealer irrespective of whether the dealer has opted for personal hearing or not".

6. The Hon'ble Division Bench of this Court also in W.A.(MD) No.234 to 240 of 2015 (In 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 as follows:

"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. The present case is squarely covered by the above said Judgment of the Hon'ble Division Bench of this Court.

8. Hence, this Court, after considering the facts and circumstances of the case, is inclined to set aside the impugned orders and accordingly the impugned orders passed by the respondent in TIN:33735263201/2013-14, TIN:33735263201/2014-15 and TIN:33735263201/2015-16 are set aside and the matter is remanded back to the respondent for fresh consideration. The petitioner is directed to submit his objections within a period of 15 days from the date of receipt of the copy of this order and co-operate with the assessing officer in the proceedings. On such submission, the respondent is directed to consider and pass orders on merits and in accordance with law, after affording an opportunity of personal hearing, within a period of one month from the date of receipt of the objections.

9. In the result, the writ petitions are disposed of as above. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

/True copy/

Sub Assistant Registrar(CS-I)

To

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

+1cc to Special Government Pleader, SR.No.72813.
+1cc to Ms.R.Hemalatha, Advocate, SR.No.72401.

W.P(MD)Nos.14939 to 14941 of 2018
and
W.M.P(MD)Nos.13499 to 13504 of 2018
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pjl

RAM/SV/SAR 1/24.07.2018/4P/4C