BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.09.2018

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THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.8223 of 2014
and
M.P.(MD)No.1 of 2014

B.Asoka Kumar ... Petitioner

Vs.

The Assistant Commissioner of Commercial Taxes,
Kuzhithurai,
Kanyakumari District. ... Respondent

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN: 33616184864/2012-13, Dated 07.04.2014 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and to direct the respondent to finalize the assessment for 2012-2013, after issuing a fresh notice, properly disclosing the proposal, with due opportunity to the petitioner to show cause against the same and the grant of a personal hearing.

For Petitioner : Mr.M.Azeem

For Respondent : Mr.A.Thiyagarajan,
Government Advocate

ORDER

This writ petition has been filed by the petitioner seeking a Writ of Certiorarified Mandamus to call for the records on the file of the respondent in TIN: 33616184864/2012-13, dated 07.04.2014 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice, and to direct the respondent to finalize the assessment for the Assessment Year 2012-2013, after issuing a fresh notice, properly disclosing the proposal, with due opportunity of personal hearing to the petitioner.

2. The learned Counsel for the petitioner would submit that the petitioner, who is an assessee on the file of the respondent, has filed his returns for the subject assessment year on time, based on which, his assessment was finalized under Section 22 of the Tamil Nadu Value Added Tax Act. Thereafter, the petitioner was issued with

a pre-revision notice, dated 18.12.2013, citing some discrepancies, for which, the petitioner sought time for making his objections. Accordingly, the petitioner has made his objections dated 11.04.2014, however, in the meantime, the respondent, on 07.04.2014, has passed the impugned order, thereby, enhanced the levy of tax and imposed penalty.

3. The learned Counsel would further submit that in the pre-revision notice, the respondent has proposed to disallow an ITC of Rs.2,66,404/- and proposed to levy penalty under Section 27(4)(i) at 150% of the ITC, which will come to Rs.3,99,606/-. However, while passing the impugned order, some other work allotments has been included other than the one in the pre-revision notice and such inclusion is without notice to the petitioner. In sum and substance, the learned Counsel would submit that the respondent, before deviating from the original proposal, ought to have issued a revised pre-assessment notice, which he failed to do so and hence, the petitioner is before this Court, for the aforesaid relief.

4. Heard the learned Counsel appearing on either side and perused the materials placed before this Court.

5. During the course of arguments, it is brought to the notice of this Court that the impugned order is an appealable one and the petitioner has to exhaust the same by preferring an appeal before the appellate authority.

6. Be that as it may, a Division Bench of this Court, in similar circumstances, in the decision in ***G.V.Cotton Mills (P) Ltd., Rep. by its Managing Director, Coimbatore v. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore, in W.A.Nos.234 to 240 of 2015, dated 16.03.2018***, has held that failure on the part of the assessee to submit objections to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing to the assessee.

7. The Hon'ble Supreme Court in the decision reported in ***2013 (10) Scale 608***, in the case of ***Swami Devi Dayal Hospital and Dental College v. The Union of India and others***, has held 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.

8. The assessee was denied with the opportunity of personal hearing, since objection was not given to the pre-assessment notices, on time. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee and pass orders, on merits. But, the same lacks in the present case on hand. Since, it is a clear

violation of principles of natural justice, the impugned order passed by the respondent is liable to be quashed.

9. Accordingly, the impugned order, dated 07.04.2014, is quashed and the matter is remitted back to the respondent for fresh consideration. The respondent is directed to issue notice, calling for objections within a period of two weeks from the date of receipt of a copy of this order and the petitioner is directed to give his reply within one week thereafter. After affording opportunity of personal hearing to the petitioner, the respondent is directed to pass appropriate orders within two weeks thereafter. It is made clear that if the petitioner is dragging on the proceedings, by adapting delay tactics, it is open to the respondent to record the same and proceed further in the manner known to law.

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

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS I)

gk

To
The Assistant Commissioner of Commercial Taxes,
Kuzhithurai, Kanyakumari District.

1CC TO MR. M. AZEEM ADVOCATE SR 83203

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