BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)No.15767 of 2018
and
W.M.P(MD)No.14126 of 2018

Tvl.Nataraja Oil Mills Pvt. Ltd.,
represented by its
Director,
N.Senthil Nathan,
Uthangudi, Madurai. ... Petitioner

Vs.

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

PRAYER: 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 TIN:33774940751/2010-11, dated 25.06.2018 and quash the same as illegal, invalid and against the principles of natural justice.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.S.Dhayalan
Government Advocate

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ORDER

Complaining violation of principles of natural justice in passing the impugned order in TIN:33774940751/2010-11, dated 25.06.2018, the petitioner is before this Court.

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 2010-11 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 details obtained

from the web, the sale amounts were estimated and some discrepancies were found in income tax returns. Pursuant to the report submitted by the inspection team of the Enforcement Wing, the respondent has issued a revision notice dated 02.04.2018. The petitioner submitted his objections in May 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, but proceeded to pass orders without accepting the request of the petitioner. Therefore, the petitioner is before this Court.

3. I have given my anxious consideration to the rival submissions and also perused the materials available before this Court.

4. On perusal of the objections filed by the petitioner to the revision notice issued by the respondent, dated 02.04.2018, it could be 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 considered the objections alone and passed the order impugned dated 25.06.2018.

5. A perusal of the impugned order reflects the date of revision notice and objections received from the dealer without specifying any date. 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. When a request is made for personal hearing, it is incumbent on the assessing authority to provide such an opportunity.

6. In the instant case, from the perusal of the records, it is seen that the revision notice was issued pursuant to the surprise inspection conducted by the officials of the Enforcement Wing of the Department. That inspection was based on the details obtained from the web.

7. We do not find any material to show that the details obtained through the web were supplied to the petitioner and an opportunity was given 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. The Head of the Department, namely, the Commissioner of Commercial Taxes issued categorical instructions on the basis of the report submitted by the Honourable Mr.Justice G.Ramanujam Committee. The instructions with regard to the procedure for passing assessment orders are laid down therein. The Assessing Officer is instructed to secure all the details and objections from the dealers and thereafter, pass orders. In this process, the opportunity of personal hearing is made as a mandatory requirement. The said instructions clearly state that whether the objections were received or not, the personal hearing shall be given. When such a requirement is mandatory, what is expected of the Assessing Officer is to fix a date for personal hearing and communicate the same to the dealer concerned. After affording ample opportunity during personal hearing, a decision shall be taken.

9. In similar circumstances, a Division Bench of this Court in a batch of Writ Appeals in ***W.A.Nos.234 to 240 of 2015 [G.V.Cotton Mills (P) Ltd., Vs. The Assistant Commissioner (CT), Avarayampalayam Assessment Circle, Coimbatore]*** dated 16.03.2018, has held as under:-

Denial of Personal hearing:

> “10.The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. 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 orders 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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> 11.The Hon'ble 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 is required in such cases, unless specifically excluded by a statutory provision.”

10. In the instant case, even though personal hearing is sought for, that was not granted to the petitioner. A reading of the impugned order also clearly shows that the assessing authority

has not at all considered the request of the petitioner or the instructions issued by the Commissioner of Commercial Taxes, before passing final orders. Therefore, it is crystal clear that the order impugned is violative of principles of natural justice.

11. In the facts and circumstances of the case, this Court is inclined to set aside the impugned order passed by the respondent in TIN:33774940751/2010-11, dated 25.06.2018 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 directed to furnish all the details obtained from the web which are relied on for passing the assessment order in respect of confirmed proposals, to the petitioner forthwith. 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 fifteen days thereafter. On receipt of the objections from the petitioner, the respondent is directed to afford an opportunity of personal hearing to the petitioner and decide the matter uninfluenced by the report of the Enforcement Wing officials, in accordance with law on merits within a period of four weeks thereafter.

12. In the result, this writ petition is allowed as above. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The State Tax Officer,
Melur Assessment Circle,
Melur, Madurai.

+1cc to Mr.A.Chandrasekaran, Advocate Sr.No.74026
+1cc to Spl.Government Pleader Sr.No.74149

RSB

VB/RP/SAR1/30.08.2018/4P/4C

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