BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)Nos.16782 and 16783 of 2018
and
W.M.P.(MD)Nos.14842 and 14843 of 2018

M/s.Raasi Agencies,
represented by its Proprietor K.Rakesh,
No.34, Chinnaiya Street,
Manapparai,
Trichy District. .. Petitioner in both the petitions

Vs.

The Commercial Tax Officer,
Manapparai Circle,
Manapparai,
Trichy. .. Respondent in both the petitions

PRAYER: Writ Petitions 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 33513741198/2013-14 and TIN 33826258420/2014-15, respectively dated 21.02.2018 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass assessment order afresh, after affording an opportunity of being heard to the petitioner by considering the reply, dated 31.07.2017 and pass orders according to law, within a stipulated time.

For Petitioner in both the petitions : Mr.S.Sridhar

For Respondent in both the petitions : Mr.A.Muthukaruppan, Additional Government Pleader

COMMON ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and it has been filing return regularly. On surprise inspection conducted by the respondent on 14.02.2017, certain defects were noted by the respondent for the assessment years 2013-14 and 2014-15. In that regard, the respondent has issued a notice dated 30.06.2017 to which the petitioner filed objections on 31.07.2017. Thereafter, final assessment orders came to be passed on 21.02.2018 without affording an opportunity of personal hearing. Aggrieved over the same, the petitioner is before this Court.

2. Heard the learned counsel appearing for the parties.

3. Admittedly, a notice was issued on 30.06.2017 and objections were filed on 31.07.2017. The respondent has not fixed any date for personal hearing and communicated the same to the petitioner. A reading of the impugned orders reveal that no such exercise was done by the respondent. 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, the respondent has passed the impugned orders after a period of six months.

4. In similar circumstances, a 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.
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> 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."

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

6. In view of the above, this Court is inclined to set aside the impugned orders, dated 21.02.2018, for not providing an opportunity of personal hearing to the petitioner. Accordingly, the impugned orders dated 21.02.2018 passed by the respondent are set aside and both the matters are remanded back to the file of the respondent for fresh consideration. The respondent is directed to provide an opportunity of personal hearing to the petitioner and then, to pass orders on merits and in accordance with law, within a period of two months from the date of receipt of copy of this order.

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

Sd/-
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar(CS-III)

To

The Commercial Tax Officer,
Manapparai Circle,
Manapparai,
Trichy.

W.P(MD)Nos.16782 and 16783 of 2018
Dated: 30.07.2018

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JM/SKN RSK/SAR 3/20.08.2018/3P/2C