BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)Nos.22087 to 22089 of 2018
and
W.M.P.(MD)Nos.20016 to 20018 of 2018

Tvl.Jay Dev Traders,
Rep. by its proprietor
N.Balashankar .. Petitioner in all WPs

Vs.

The Assistant Commissioner (CT),
Bodi Assessment Circle,
Bodinayakkanur. .. Respondent in all Wps

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS, calling for the records on the file of the respondent in TIN : 33755081994/2013-14 to 2015-16, respectively, dated 28.03.2018, quash the same and further direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the Notice dated 29.05.2017 and after verifying the books of accounts of the petitioner.

For Petitioner : Mr.A.Chandrasekaran (in all Wps)
For Respondent : Mr.D.Muruganantham,
Additional Government Pleader
(In all WPs)

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COMMON ORDER

These writ petitions are directed against the impugned orders passed by the respondent in TIN : 33755081994/2013-14 to 2015-16, respectively, dated 28.03.2018, whereby and whereunder, revised assessment orders came to be passed.

2. As the issue involved in all the cases are similar in nature, they are disposed of by way of this common order.

3. The petitioner before this Court is a dealer in Two Wheeler spare parts and an assessee on the file of the respondent herein. The subject assessment years are 2013-14 to 2015-16, for which, the petitioner filed their returns, on time and they were deemed to have

been assessed in view of Section 22(2) of the TNVAT Act. However, on the basis of the inspection report and further scrutiny of web reports, the authorities found some discrepancies in the tax returns. Pursuant to the same, the respondent has issued pre-revision notice for the subject assessment years on 29.05.2017, but, due to the ill health condition of the proprietor of the petitioner firm, they are not in a position to respond immediately. In the mean time, the impugned order came to be passed, without providing an opportunity of personal hearing to the petitioner and hence, they are before this Court.

4. Learned Additional Government Pleader appearing for the respondent, on the other hand, would submit that the petitioner was issued with show cause notices dated 29.05.2017. But, the petitioner did not respond. Hence, having left with no other option, the respondent, after recording this aspect, has proceeded with the matter and passed the impugned orders dated 28.03.2018. Therefore, he prays for dismissal of the present writ petitions.

5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. It is not in dispute that the petitioner was served with pre-revision notices dated 29.05.2017, inviting objections, but, the petitioner did not respond. But still, it is mandatory on the part of the authorities to post the matter for personal hearing. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the **Justice Ramanujam Committee**, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner. But, in the impugned order, there is no whisper as to the same.

7. In this context, 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 failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

> *"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."*

8. On this sole ground, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned orders in TIN 33755081994 / 2013-14 to 2015-16, respectively, dated 28.03.2018 are set aside and the matter is remitted back to the file of the respondent for fresh consideration.

9. It is seen that the footing on which the present impugned orders came to be passed is on mismatch of particulars between the Annexure I of buyer end and Annexure II of seller end. A learned Single Judge of this Court in the decision reported in ***[2017] 99 VST 343 (Mad)*** in the case of ***Assistant Commissioner (CT), Kolathur, Chennai v. Infiniti Wholesale Ltd., decided on 09.09.2016***, has elaborately discussed about the procedure to be followed by the Assessing Officers in cases of mismatch. For better appreciation, the relevant portion of the said decision is extracted thus:

> *"... In cases where mismatch occurs, it is a starting point for an enquiry. The first phase of enquiry should be at the Department level, as in most cases, both the dealers are registered in different assessment circles. The Court has come across cases, where such mechanically drafted show-cause notices have been sent by assessing officers without embarking upon any enquiry, even though the other end dealer is also registered within his jurisdiction. Thus, when the assessing officer has data to show that the dealers registered with him, whose returns have been accepted when compared to the other end dealer does not match, then the assessing officer is first required to enquire with the assessing officer of the other end dealer to make verifications as to whether the mismatch could have occurred due to any one of the factors, which may not be due to the deliberate default of the dealer, satisfy himself that and after such verification, if prima facie appears that the returns to be revised, at that stage, the assessing officer would be entitled to issue a show-cause notice containing full particulars and clearly stating as to what was the scope of enquiry done by him and why he is of the prima facie view that the dealer has failed to file proper returns or suppressed information. It is only then the dealer would be in a position to put forth his defence and demonstrate as to how this prima facie view is without any basis."*

10. Therefore, the respondent, while considering the matter afresh, shall proceed further, keeping in mind the decision of this Court reported in ***[2017] 99 VST 343 (Mad)*** (cited supra). Since the service of pre-revision notices dated 29.05.2017 is not in dispute, the petitioner is hereby directed to make his reply cum objection, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing, within a period of two weeks from the date of receipt of a reply/representation from the petitioner and

communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent with all relevant records and put forth his contentions and after hearing the petitioner, the respondent, by considering the reply and objections, shall pass appropriate reasoned order, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the respondent shall record the same and pass appropriate orders, in accordance with law.

11. With the above observations and directions, all the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Assistant Commissioner (CT),
Bodi Assessment Circle,
Bodinayakkanur.

+ 1 CC TO Mr.A.CHANDRASEKARAN, ADVOCATE IN SR No. 92891

GK
TE/SV/SAR-2 : 28/11/2018 : 4P/3C

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