BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.08.2018
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition(MD)No.17281 of 2018
and
W.M.P.(MD).No.15219 of 2018

Tvl. M.S.V.Traders,
represented by its Proprietor
S.Sudalaimuthu,
177 D1 & D2, Road No.11,
Main Road,
Kadayanallur 627 751.
Tirunelveli District. ... Petitioner

Vs.

1. The Appellate Deputy Commissioner (ST).
Tirunelveli.

2. The Deputy Commercial Tax Officer,
Shengottah.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to quash the revised order passed by the second respondent in TIN:338163147734/2015-16, dated 10.08.2017 [Correct TIN:33816314734] as the same is passed by grossly violating the principles of natural justice and also being contrary to the judgment of this Court reported in the Batch cases relating to mismatch issue in the case of M/s. JKM Graphics Solutions Private Limited & Others vs. Commercial Tax Officer, Vepery Assessment Circle and others in W.P.No.105/2016, dated 01.03.2017 reported in (2017) 99 VST 343 and to direct the second respondent to pass order afresh after providing an opportunity of personal hearing.

For Petitioner : Mr.K.Srinivasan
For Respondents: Mr.S.Dhayalan
Government Advocate

ORDER

The petitioner is a registered Dealer under the second respondent and an assessee under TNVAT Act, 2006. He filed returns for the assessment year 2015 - 2016, which was deemed to have been assessed. After verification of the Web Report, the second respondent issued a pre-revision notice, dated 23.06.2017. It is submitted by the counsel that the petitioner went in person and sought for all the details of the Web Report from the respondent. However, without furnishing the details and without affording an opportunity of personal hearing, the second respondent has passed the impugned proceedings in TIN:33816314773 4/2015-16, dated 10.08.2017. Aggrieved over the same, the petitioner is before this Court.

2. The learned counsel for the petitioner would rely on a judgment in JKM Graphics Solutions Private Limited vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai reported in (2017) 99 VST 343 (Mad), that the re-assessment on the basis of mismatch between details shown in dealer's return and details of dealer at other end available on Department Website, not permissible - mismatch is merely a starting point for investigation. Enquiry must be made by the Assessing Authority, as per the procedure laid down by the Commissioner and an opportunity of personal hearing must be afforded to the petitioner and so far as the opportunity is not given, the impugned order is liable to be set aside.

3. The learned Government Advocate vehemently contended that the pre-revision notice was issued on 23.06.2017 and the Dealer was directed to submit his objection. Even though it is stated that oral request was made by the petitioner seeking details of Web report, there is no evidence to substantiate the same. In the absence of any evidence, it should be construed that the Dealer has failed to file his objection and avail the opportunity of personal hearing. Therefore, the impugned order shall not be interfered with. The petitioner is only directed to avail the opportunity under the constitute.

4. I have considered the submissions made by both sides.

5. Upon perusal of the revision notice, it is seen that on the details obtained from the Web Report, the Assessing Authority has formulated the proposals as to the suppression of certain interstate purchases and not eligible to avail the concession provided under Section 3(4) of TNVAT Act.

6. It is well settled that when certain details are taken from the Web, which is privy to the respondent only, it is incumbent on him to furnish the details, enabling the Dealer to file an effective reply. But, in the instant case, such details obtained from the Web was not supplied to the Dealer. Further, as per the procedure laid down by the Commissioner to the Assessing Authorites, it is mandate that an opportunity of personal hearing must be given, whether it is sought for or not. In the instant case, it is crystal clear that no such opportunity was granted to the petitioner.

7. In such circumstances, the impugned order dated 10.08.2017, is set aside and the matter is remanded back to the authorities for consideration afresh. The second respondent is

directed to provide the details sought for by the petitioner and afford him an opportunity of personal hearing, before passing final orders. The petitioner is directed to submit his objection within 15 days from the date of receipt of details. The writ petition is disposed of accordingly. No costs. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Appellate Deputy Commissioner (ST).
   Tirunelveli.

2. The Deputy Commercial Tax Officer,
   Shengottah.

+1CC to Mr.K.Srinivasan, Advocate, SR.No.76644
+1CC to the Special Government Pleader SR.No.76984

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