BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 03.08.2018
CORAM
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)Nos.17376 to 17385 of 2018
and W.M.P.(MD) Nos.15292 to 15295 & 15297 to 15302 of 2018

In W.P.(MD) No.17376 to 17385 of 2018:

Tvl.Sree Kaderi Ambal Mills Pvt. Ltd.,
Represented by its Director SV Pethaperumal,
Super B-3,
Industrial Estate,
Madurai. .. Petitioner in all Writ Petitions

Vs.

The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Commercial Tax Building,
Madurai. ... Respondent in all Writ Petitions

COMMON PRAYER: Petitions are filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for records in TIN No.33774880126/2007-08, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 dated 28.03.2018 issued by the respondent and quash the same as illegal and against the principles of natural justice and direct the respondent to pass a assessment order afresh after considering the representation dated 27.02.2018 and after affording opportunity of being heard.

In all writ petitions:
For Petitioners : Mr.S.Karunakar
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

C O M M O N O R D E R

Challenging the assessment orders passed in TIN NO. 33774880126/2007-08, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 dated 28.03.2018, on the ground of violation of principles of natural justice, the petitioner is before this Court.

2. The petitioner is manufacturer of yarn and assesssee under the respondent under TNVAT Act, 2006. For the assessment years 2007-08, 2008-2009, 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014, 2014-2015, 2015-2016, 2016-2017 dated 28.03.2018, the petitioner filed returns, which are deemed to have been assessed. Subsequently on the basis of inspection conducted at the place of business on 19.11.2014, the respondent issued a revision notice dated 27.02.2018 pointing out certain discrepancies. The petitioner submitted objections on 20.03.2018. The respondent passed the final orders on 28.03.2018.

3. Heard both sides and perused the materials available on record.

4. A reading of the impugned order reveals that the objections were submitted by the petitioner only on 20.03.2018. It is stated that on the very same day, personal hearing was also conducted and the petitioner has appeared. Whereas the factum of conduct of the personal hearing is disputed by the petitioner. From the dates of proceedings, it would be seen that notice issued on 20.03.2018 culminated in an order on 28.03.2018. When the objection was filed 20.03.2018, it is highly improbable for the respondent to fix the date for personal hearing and passing orders within weeks time. Therefore, the contention of the petitioner that an opportunity of personal hearing was not given to him appears to be probable.

5. This Court in very many cases categorically held that an opportunity of personal hearing must be adhered while passing assessment orders.The Commissioner of Commercial Taxes has also issued instructions to the assessing authorities based on the recommendation of the Justice Sri Ramanujam Committee whereas it is mandated that whether the dealer asked for personal hearing or not it shall be afforded to them by the assessing authority.

6. 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 in such cases, unless specifically excluded by a statutory provision.

7. Therefore, it is mandatory to adhere to the principles of natural justice by affording an opportunity of personal hearing before taking a decision. But, without affording an opportunity, the impugned order is passed, which amounts to violation of principles of natural justice.

8. In the instant case, the opportunity of personal hearing is denied to the petitioner. Therefore, the impugned orders dated 28.03.2018 are set aside and the matter is remanded back to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing to the petitioner and pass orders within a period of one month from the date of receipt of a copy of this order. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-IV)

To,
The Assistant Commissioner (CT),
Tallakulam Assessment Circle,
Commercial Tax Building,
Madurai.

+1CC TO MR.S.KARUNAKAR, ADVOCATE IN SR.NO.76974.
+1CC TO SPECIAL GOVERNMENT PLEADER IN SR.NO.77320.

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DS RSK SAR-4 12.10.2018 3P/4C

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W.P(MD)Nos.17376 to 17385 of 2018
and
W.M.P.(MD) Nos.15292 to 15295 & 15297 to 15302 of 2018
In W.P.(MD) No.17436 of 2018

03.08.2018