BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.08.2018

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THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P(MD)Nos.17439 and 17440 of 2018
and W.M.P.(MD) Nos.15340 and 15341 of 2018

In W.P.(MD) No.17439 of 2018:

Tvl.Siva Timbers,
Represented by its Partner,
R.Suthanantham .. Petitioner

Vs.

The Assistant Commissioner (ST),
Thoothukudi - III Circle,
Thoothukudi. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings passed by the respondent in TIN: 33135925168/2013-2014 dated 28.03.2018 and quash the same as the same is illegal and passed by grossly violating the principles of natural justice ad direct the respondent to furnish all the details of information obtained from the alleged electronically generated through intranet departmental website for the alleged mismatch report and to decide the petitioner's case as per the guidelines and directions given by this Hon'ble Madras High Court in the mismatch batch of cases in W.P.No.105 of 2016 and others relating to M/s.JKM Graphics Solutions Private Limited & Others Vs. Commercial Tax Officer, Vepery Assessment Circle and Others dated 01.03.2017, after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Honourable Division Bench of this High Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd., rep. by its Chief Executive Officer, Salem Vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai.

In W.P.(MD) No.17440 of 2018:

Tvl.Siva Timbers,
Represented by its Partner,
R.Suthanantham .. Petitioner

Vs.

The Assistant Commissioner (ST),
Thoothukudi – III Circle,
Thoothukudi. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned proceedings passed by the respondent in TIN: 33135925168/2014-2015 dated 28.03.2018 and quash the same as the same is illegal and passed by grossly violating the principles of natural justice ad direct the respondent to furnish all the details of information obtained from the alleged electronically generated through intranet departmental website for the alleged mismatch report and to decide the petitioner's case as per the guidelines and directions given by this Hon'ble Madras High Court in the mismatch batch of cases in W.P.No.105 of 2016 and others relating to M/s.JKM Graphics Solutions Private Limited & Others Vs. Commercial Tax Officer, Vepery Assessment Circle and Others dated 01.03.2017, after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Honourable Division Bench of this High Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd., rep. by its Chief Executive Officer, Salem Vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai.

In both writ petitions:
For Petitioners : Mr.K.Srinivasan
For Respondent : Mr.S.Dhayalan
Government Advocate

COMMON ORDER

Challenging the assessment orders passed by the respondent in TIN: 33135925168/2013-2014, TIN: 33135925168/2014-2015 dated 28.03.2018, the petitioner is before this Court.

2. The petitioner is the dealer in Timbers and assessee of the respondent under Tamilnadu VAT Act, 2006. He filed returns for the assessment years 2013-2014 and 2014-2015, which were deemed to have been assessed. On 07.10.2014, it appears that an inspection was conducted by the Officers of the Enforcement Wing of the Department. During the course of inspection, inspection team noticed certain defects.

3. Based on the report of the inspection team, a revision

notice was issued on 07.10.2014. Thereafter on the basis of the sworn statement given by the Accountant for the same on 21.04.2017 and 22.12.2017, the respondent passed final orders. Challenging the orders passed by the respondent, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that surprise inspection was taken place on 07.10.2014, but, they have not received any pre-revision notice from the respondent and that the Accountant, who is said to have given sworn statement, has expired on 23.06.2017 and therefore, it is improbable to record the statement on 22.12.2017. The respondent has not afforded an opportunity of personal hearing and therefore, he would pray for quashing of the impugned order.

5. Heard the learned counsel for the petitioner and the learned Government Advocate appearing for the respondent.

6. Upon consideration of the impugned order passed by the respondent and on perusal of the materials, it is seen that there is a surprise inspection conducted in the place of business of the petitioner on 07.10.2014. The inspection team has pointed out two defects. But surprisingly the revision notice was also issued on 07.10.2014, that is the date of inspection. Normally, when an inspection report is forwarded to the Assessing Authority, he would consider the same and formulate proposals, and send pre-revision notice. In normal circumstance, revision notice would not have been issued on the same day. Therefore, issuance of revision notice on 07.10.2014 is highly improbable as contended by the petitioner.

7. Further, it is observed in the order that the Accountant has given a sworn statement on 21.04.2017 and 22.12.2017 and issued a cheque for defect No.1. Even assuming that the sworn statement was given by the Accountant, it could have been given only on the date of inspection, but not on subsequent date. Further, the petitioner would produce the death certificate of the Accountant which shows that the date of death is 23.06.2017. From the dead person sworn statement could not have been obtained on 22.12.2017 that is after six months from the date of death.

8. Therefore, the impugned orders lead us to infer that the respondent neither issued pre-revision notice nor afforded personal hearing. Therefore, this Court is not inclined to believe the observations made in the impugned order. It is crystal clear that the order was passed by the respondent without calling for objections and also without affording an opportunity of personal hearing.

9. In such circumstances, the impugned orders are not sustainable, which are in violation of principles of natural justice.

10. Accordingly, the impugned orders dated 28.03.2018 in TIN: 33135925168/2013-2014 and TIN: 33135925168/2014-2015 are set aside. It is open to the respondent to issue pre-revision notice with regard to the defects formulated by him, call for objections and pass orders after affording an opportunity of personal hearing to the petitioner, uninfluenced by the report of the Enforcement Wing Officials, within a period of two months from the date of receipt of a copy of this order.

11. In the result, the writ petitions are allowed. No costs. Consequently, connected W.M.P.(MD) Nos. 15340 and 15341 of 2018 are closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-II)

To

The Assistant Commissioner (ST),
Thoothukudi – III Circle,
Thoothukudi.

+ 2 CC TO Mr.K.SRINIVASAN, ADVOCATE IN SR Nos. 76904 & 76905
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 77257

CM
TE/RP/SAR-2: 28/08/2018 : 4P/5C

W.P(MD)Nos.17439 and 17440 of 2018
03.08.2018