BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.10.2018

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P(MD)Nos.21003 to 21006 of 2018
and
W.M.P.(MD).Nos.18776 to 18779 of 2018

G.R.Hardwares,
represented by its Proprietrix,
Mrs.G.Yasodhai,
No.2/1309-A, B & C, Vembakottai Road,
Sithurajapuram Post,
Sivakasi,
Virudhunagar District. .. Petitioner in all these petitions

Vs.

1. The State of Tamil Nadu,
rep. by its Secretary to Government,
Department of Commercial Taxes &
Registration Department,
Fort St. George,
Chennai – 600 009.

2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk,
Chennai – 600 005.

3. The Joint Commissioner,
Enforcement Wing,
Commercial Taxes,
Thirunelveli.

4. The Commercial Tax Officer – II,
Office of the Assistant Commissioner CT-II,
Sivakasi. .. Respondents in all these petitions.

**COMMON PRAYER:** Writ Petitions have been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the assessment orders in TIN 33555981488/2011-12, TIN 33555981488/2012-13, TIN 33555981488/2013-14 and TIN 33555981488/2014-15 respectively dated 12.03.2018 (received by the petitioner on 22.03.2018) issued by the 4th respondent and quash the same and to direct the 4th respondent to afford an opportunity of personal hearing before passing the assessment order for the assessment years 2011-12, 2012-13, 2013-14, 2014-15 respectively.



For Petitioner in all the petitions : Mr.M.MD.Ibrahim Ali

For Respondents in all the petitions : Mr.R.Murugan, Additional Government Pleader

**COMMON ORDER**

These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 12.03.2018 passed by the $4^{th}$ respondent for the assessment years 2011-2012, 2012-13, 2013-14 and 2014-15.

2. Since the issue involved in these writ petitions are one and the same, these writ petitions were heard together and are disposed of by way of this common order.

3. The petitioner is an assessee under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Pursuant to the VAT Audit, the $4^{th}$ respondent had issued pre-revision notices dated 05.10.2017, pointing out certain differences, for which the petitioner had submitted a representation dated 20.10.2017, requesting one month time for filing objections. But, after receipt of the same, the $4^{th}$ respondent has passed the impugned orders, dated 12.03.2018, without rejecting the said representation and without providing an opportunity of personal hearing. Hence, the petitioner is before this Court challenging the said orders.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the records carefully.

5. Admittedly, pre-revision notices were issued by the $4^{th}$ respondent on 05.10.2017. It is seen that on 20.10.2017, the petitioner has given a representation requesting one month time for filing objections. After receipt of the same, the $4^{th}$ respondent ought to have considered the said representation of the petitioner. The $4^{th}$ respondent did not even mention about the said representation given by the petitioner in the impugned orders. It is also seen that the $4^{th}$ respondent has passed the impugned orders without even providing an opportunity of personal hearing. 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 $4^{th}$ 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 4th respondent has passed the impugned orders.

6. 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 the opportunity of personal hearing cannot be denied, even if the objections not filed. The relevant portion is extracted hereunder:

> "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."

7. In this case, admittedly, the petitioner has not submitted his objections. Even then, the 4th respondent ought to have been provided an opportunity of personal hearing to the petitioner. But, the 4th respondent, in contravention of the said circular and the decisions cited supra, has passed the impugned orders, without giving an opportunity of personal hearing. Therefore, the impugned orders are liable to be set aside.

8. In view of the above, all the impugned orders, dated 12.03.2018, passed by the 4th respondent are set aside and all the matters are remanded back to the file of the 4th respondent for fresh consideration. The petitioner is directed to file his objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of such objections within the time stipulated above, the 4th respondent is directed to provide an opportunity of personal hearing to the petitioner and then, to pass reasoned orders on merits and in accordance with law, within a period of two weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the respondent is at liberty to pass appropriate order with the available records.

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



Sd/-
Assistant Registrar (CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Commercial Taxes &
   Registration Department,
   Fort St. George,
   Chennai – 600 009.

2.The Commissioner of Commercial Taxes,
   2nd Floor, Ezhilagam, Chepauk,
   Chennai – 600 005.

3.The Joint Commissioner,
   Enforcement Wing,
   Commercial Taxes,
   Thirunelveli.

4.The Commercial Tax Officer – II,
   Office of the Assistant Commissioner CT-II,
   Sivakasi.

+4cc to Mr.MOHAMED IBRAHIM ALI, Advocate, Sr.No.89345

Common Order made in
W.P(MD)Nos.21003 to 21006 of 2018
08.10.2018

GCG

KK/RSK/SAR 1/27.10.2018/2P/9C