BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.10.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.18239 to 18243 of 2018
and
W.M.P.(MD).Nos.16146 to 16150 of 2018

Tvl.Nagalakshmi Stores,
rep. by its Proprietor,
D.Babu, aged about 49 years,
S/o.Dhandayutham,
No.113, Gandhi Road,
Palani,
Dindigul District – 624 601. .. Petitioner in all these petitions

Vs.

1. The Commissioner of Commercial Taxes,
O/o.the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2. The Assistant Commissioner (ST)(FAC)-II,
Palani – II Assessment Circle,
Commercial Taxes Office,
No.A-8, Ramalingam 1st Cross Street,
Shanmugapuram,
Palani,
Dindigul District – 624 601. .. 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 pertaining to the impugned proceedings of the 2nd respondent in TIN:33925360630/2010-11, dated 31.05.2018; TIN:33925360630/2011-12, dated 31.05.2018; TIN:33925360630/2012-13, dated 31.05.2018; TIN:33925360630/2013-14, dated 12.06.2018; TIN:33925360630/2014-15, dated 14.06.2018 respectively, and to quash the same and to direct the 2nd respondent to re-do the assessment afresh after providing an opportunity.

For Petitioner : Mr.B.Rooban (in all cases)
For Respondents : Mr.R.Murugan, Additional Government Pleader (in all cases)

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 31.05.2018, 31.05.2018, 31.05.2018, 12.06.2018 and 14.06.2018 respectively passed by the 2nd respondent for the assessment years 2010-2011, 2011-12, 2012-13, 2013-14 and 2014-15 respectively.

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 on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006. Pursuant to the VAT Audit, the 2nd respondent had issued pre-revision notices, pointing out certain differences in the Web report, for which the petitioner had submitted a reply requesting a copy of the web report and also stating that the alleged purchases were all made in his wife's concern Tvl.Sri Nagalakshmi Traders. After receipt of the said reply, the 2nd respondent, without furnishing the relevant documents and without providing an opportunity of personal hearing, has passed the impugned orders. 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 2nd respondent to the petitioner on 13.04.2018, 13.04.2018, 16.04.2018, 16.04.2018 and 18.04.2018 respectively for the above said assessment years. The petitioner has sent a reply requesting to furnish a copy of the web report and also stating that the alleged purchases were all made in his wife's concern viz., Tvl.Sri Nagalakshmi Traders. But, the 2nd respondent, without considering the same, has passed the impugned order merely stating that after receipt of notice, the dealer has not filed his objections and hence, the proposals are confirmed. Even though the dealer has not filed his objections, the 2nd respondent ought to have fixed a date for personal hearing and communicated the same to the petitioner. A reading of the impugned orders reveal that no such exercise was done by the 2nd respondent. 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 2nd 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 2nd 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. The above decision is squarely applicable to this case. In this case, though the petitioner has sought for a copy of the web report, the 2nd respondent, without furnishing the same and without providing an opportunity of personal hearing, has passed the impugned orders merely stating that the dealer has received notice, but has not filed any reply till date. There is a clear violation of the principles of natural justice. Therefore, this Court is inclined to set aside the impugned orders.

8. In view of the above, all the impugned orders passed by the 2nd respondent are set aside and all the matters are remanded back to the file of the 2nd respondent. The 2nd respondent is directed to furnish a copy of the relevant documents to the petitioner within a period of one week from the date of receipt of a copy of this order. On receipt of said documents, the petitioner is directed to give his objections within a period of

two weeks thereafter. Then, the 2nd respondent shall 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 2nd respondent is at liberty to pass appropriate order with the available records.

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

Sd/-
Assistant Registrar (Records)

/True Copy/

Sub Assistant Registrar (CS-I)

To

1. The Commissioner of Commercial Taxes,
   O/o.the Principal and Special Commissioner of
   Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.

2. The Assistant Commissioner (ST)(FAC)-II,
   Palani - II Assessment Circle,
   Commercial Taxes Office,
   No.A-8, Ramalingam 1st Cross Street,
   Shanmugapuram,
   Palani,
   Dindigul District - 624 601.

+ 1 CC TO Mr.B.ROOBAN, ADVOCATE IN SR No. 88888
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 89421

GCG
TE/PM/SAR-1 : 31/10/2018 : 4P/5C

Common Order made in
W.P(MD)Nos.18239 to 18243 of 2018
05.10.2018