BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **18.09.2018**

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.19048 of 2018
and
M.P.(MD).No.16885 of 2018

M/s.Kandan Electrical Agencies,
rep. by its Proprietor,
T.Vidya Sagar,
2510-A, Trichy Road,
Thanjavur – 613 001. .. Petitioner

Vs.

The State Tax Officer (CT),
Thanjavur – I Assessment Circle,
Commercial Taxes Building,
Sachidananda Mooppanar Road,
Thanjavur. .. Respondent

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari to call for the records of the respondent in TIN No.33313801157/2012-13 dated 03.07.2018 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioners : Mr.K.Soundararajan
For respondent : Mr.A.Thiyagarajan
Government Advocate

ORDER

The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and he has been filing returns regularly. Based on the difference in the purchases shown in Annexure – II of the other end dealer available in the Web-site of the department, the respondent issued a revision notice, dated 17.05.2018 under Section 27 of the TNVAT Act. On 04.06.2018 the petitioner submitted his objections. But, the respondent, without providing an opportunity of personal hearing, has passed the final assessment order. Aggrieved over the same, the petitioner is before this Court.

2. Heard the learned counsel appearing for the parties and perused the records carefully.

3. Admittedly, a notice was issued by the respondent on 17.05.2018, for which objections were filed by the petitioner on 04.06.2018. The respondent, thereafter, ought to have fixed any 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 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 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 after filing of the objections, the respondent has passed the impugned order.

4. 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."

5. In this case, admittedly, the petitioner has submitted objections. But, the respondent, after receipt of the said objections, has passed the impugned order, without giving an opportunity of personal hearing. Therefore, the impugned order is liable to be set aside.

6. In view of the above, the impugned order, dated 03.07.2018, passed by the respondent is set aside and the matter is remanded back to the file of the respondent for fresh consideration. The

respondent is directed to provide an opportunity of personal hearing to the petitioner and then, to pass orders on merits and in accordance with law, within a period of eight weeks from the date of receipt of a copy of this order. 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

7. This Writ Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(PROTOCOL)

/True Copy/

Sub Assistant Registrar(CS II)

gcg

To

1.The State Tax Officer (CT),
Thanjavur - I Assessment Circle,
Commercial Taxes Building,
Sachidananda Mooppanar Road,
Thanjavur.

1CC TO MR. K. SOUNDARARAJAN, ADVOCATE SR 84920
1CC TO THE SPL GOVT PLEADER SR 85611

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Order made in W.P(MD)No.19048 of 2018
18.09.2018