BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **25.09.2018**
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.3472 to 3474 of 2017
and
W.M.P.(MD).Nos.2824 to 2826 of 2017

Sevenseas Polymers (P) Limited,
rep. by its Director,
P.K.Prabu,
No.37/A1, Madakkulam Main Road,
(Near GRT Hotel)
Palanganatham, Madurai-03. .. Petitioner in all W.Ps

Vs.

The Assistant Commissioner,
Madurai (Rural) (South) Circle
Madurai-20 .. Respondent in all W.Ps

PRAYER in W.P.(MD).No.3472 of 2017: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records on the files of the Respondent herein in TIN : 33353681437/2012-13 dated 30.12.2016 quashing the same.

PRAYER in W.P.(MD).No.3473 of 2017: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records on the files of the Respondent herein in TIN : 33353681437/2013-14, dated 30.12.2016 quashing the same

PRAYER in W.P.(MD).No.3474 of 2017: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari or any other appropriate writ order or direction under Article 226 of the Constitution of India calling for the records on the files of the Respondent herein in TIN : 33353681437/2014-15 dated 30.12.2016 quashing the same.

For Petitioner : Mr.N.Inbarajan
For respondents : Mr.R.Murugan
Addl. Government Pleader
(In all W.Ps)

COMMON ORDER

Though the petitioner has raised various contentions in the writ petitions, the only grievance of the petitioner is that no opportunity of personal hearing was given to him.

2. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 and under the Central Sales Tax Act, 1956. He has been filing returns regularly. An inspection was conducted at the business place of the petitioner on 26.03.2015 by the Enforcement Wing of the Commercial Taxes Department. On 15.04.2015 and 04.10.2016 the petitioner submitted his reply. But, the respondent, without providing an opportunity of personal hearing, has passed the three separate impugned orders, dated 30.12.2016, for the assessment years 2012-13, 2013-14 and 2014-15. Aggrieved over the same, the petitioner is before this Court.

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

4. Admittedly, an inspection was conducted by the respondent on 26.03.2015, for which reply was filed by the petitioner on 15.04.2015 and 04.10.2016. 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 orders. Therefore, on that score alone, the impugned order is liable to be set aside.

5. 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.

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."

6. In this case, admittedly, the petitioner has submitted his reply/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.

7. In view of the above, the impugned order, dated 30.12.2016, 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 issue a notice of hearing to the petitioner within a period of two weeks from the date of receipt of a copy of this order. On receiving the notice, the petitioner shall appear for the personal hearing and thereafter place all his contentions and the authority shall pass orders within a period of four 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

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

Sd/-

Assistant Registrar (RTI)

// True Copy //

Sub Assistant Registrar(CS-I)

To
The Assistant Commissioner,
Madurai (Rural) (South) Circle
Madurai-20.

+2 CC To MR.INBARAJAN, Advocate SR. NO.86517 & 86518
+1 CC TO The Special Government Pleader SR.NO. 86701 TO 86703

Common Order made in
W.P(MD)Nos.3472 to 3474 of 2017
25.09.2018

VS
TR/SKN/SAR-I(25.10.2018)4P 5C