BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

Writ Petition(MD)Nos.15764 to 15768 of 2016
and
W.M.P.(MD).Nos.11558 to 11562 of 2016

M/s. D.J.Automobiles Company,
represented by its Managing Partner,
No.34, Promenade Road,
Cantonment,
Trichy 620 001.

... Petitioner in all W.Ps.

Vs.

The Assistant Commissioner (CT),
Palakkarai – I Assessment Circle,
Trichy -1.

... Respondent in all W.P.s

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN.33293520062/2009-2010, 2010-2011, 2011-2012, 2012-2013 and 2013-2014 and quash the impugned orders dated 27.07.2016, 28.07.2016 and 01.08.2016, as passed by the respondent contrary to the principles of natural justice and further direct the respondent to grant an opportunity to the petitioner to file its objections which may be considered by the respondent with an independent mind and pass a fresh assessment order not being influenced by the VSI proposals received from the enforcement wing officials.

For Petitioner in all W.Ps. : Mr.P.Rajkumar
For Respondent in all W.Ps. : Mr.S.Dhayalan
Government Advocate

C O M M O N O R D E R

The petitioner is the Dealer in Automobiles. For the assessment years 2009 - 2010, 2010 - 2011, 2011 - 2012, 2012 - 2013 and 2013-2014, notices were issued by the respondent calling for objection giving 15 days time. It appears that the petitioner's son was admitted in National Institute of Mental Health and Neuro Sciences, Bangalore for Neuro problem. Therefore, producing medical records, he sought for time to file objection. However, on 14.07.2016, he filed objection in respect of assessment years 2009 - 2010, 2010 - 2011, 2011 - 2012 and 2012 - 2013. He also sought for further time for filing additional reply. However, without considering the request of the petitioner, final orders were passed, which is under challenge before this Court.

2. According to the respondent, reasonable opportunity was given to the petitioner between 21.04.2016 and 27.07.2016 for filing objection. The petitioner has not availed the period with an intention to protract the proceedings sought for time for one reason or other. Therefore, his request was rejected and final orders were passed. In such circumstances, the contention that the final orders passed by the respondent does not require any interference.

3. Heard both sides and perused the materials placed before this Court.

4. Admittedly, the petitioner has sought for time for filing his objection. On a perusal of the medical records, it would go to show that the petitioner's son was admitted in National Institute of Mental Health and Neuro Sciences, Bangalore and has undergone treatment till 01.06.2016. Therefore, it is natural that between 21.04.2016 and 01.06.2016, the petitioner would not have been in a position to concentrate in her business. The further records would go to show that the treatment taken in National Institute of Mental Health and Neuro Sciences, Bangalore continued till 13.08.2016. Therefore, there was a bona fide reason as stated by the petitioner in not submitting the objection in full. In such circumstances, the request made by the petitioner has to be considered. It is also seen that despite the above predicament the petitioner has submitted her partial objection and sought for time for filing additional objection in the matter. A perusal of the revision notice also shows that there is some escaped transactions which came to light during surprise inspection. In such circumstances, the Dealer must have been provided with the materials, which were relied by the respondent, while passing final orders. But in the instant case, it is obvious to note that no such materials were furnished to the petitioner, nor opportunity of personal hearing was afforded. Without considering the request for further extension of time, either accept it or reject it, the authority had proceeded to pass final orders. It is expected that in view of the principles of natural justice that the request made by the petitioner should have been considered and a reply should have been sent by the respondent, as to whether it is accepted or rejected. After sending that communication, date should have been fixed for personal hearing and thereafter, final order should have been passed. The instruction issued by the Department in this regard indicates that the assessing authority shall be flexible in granting time to a reasonable extent. After granting time, whether the objections are filed or not, it is mandated by the same instructions issued by the Commissioner of Commercial Taxes that personal hearing should be afforded.

5. In the instant case, the respondent has not even considered the request made by the petitioner and passed orders on the same and also failed to give opportunity of personal hearing to

the petitioner. From the materials available, it is clear that the petitioner was precluded from filing the objection in time, due to the unavoidable circumstances. Therefore, in order to give one more opportunity to the petitioner, the orders passed by the respondent dated 27.07.2016, 28.07.2016 and 01.08.2016 are set aside and the matter is remanded back to the respondent for fresh consideration. Accordingly, the respondent is directed to furnish the documents relied and on receipt of the same, the petitioner is directed to submit all the objections along with the documentary evidence before the respondent within a period of 15 days from the date of receipt of a copy of this order. On receipt of the documents, the respondent shall pass orders, after affording opportunity of personal hearing to the petitioner, within a period of two months thereafter. These Writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar(CS-I)

To

The Assistant Commissioner (CT),
Palakkarai – I Assessment Circle,
Trichy -1.

+1CC to Mr.P.Rajkumar Advocate in SR.No.72167.

+1cC to Special Government Pleader in Sr.No.72256.

AKV
DS/SKN/SAR-1 :20.08.2018: 3P/4C

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