BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.20230 to 20233 of 2018
and
W.M.P.(MD).Nos.17987 to 17994 of 2018

M/s.Sanmathi Agency,
rep. by its Proprietor,
A.D.Shalivahanan,
S/o.Durairaj,
10/15, Subramaniyapuram,
5th Street, North Extension,
Karaikudi,
Sivagangai District – 630 002. .. Petitioner in all these petitions

Vs.

The Commercial Tax Officer,
Karaikudi Assessment Circle,
Karaikudi,
Sivagangai District. .. 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 Certiorari, to call for the records in TNVAT 33595482304/11-12, TNVAT 33595482304/12-13, TNVAT 33595482304/13-14 and TNVAT 33595482304/17-18 respectively, dated 24.05.2018, on the file of the respondent and quash the same as illegal.

For Petitioner in all the petitions : Mr.S.Bharathy Kannan

For Respondent in all the petitions : Mr.D.Muruganandham, Additional Government Pleader

COMMON ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 24.05.2018, passed by the respondent for the assessment years 2011-12, 2012-13, 2013-14 and 2017-18.

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 conducted on 11.04.2017, the respondent had issued pre-revision notices, dated 28.03.2018, pointing out certain differences, for which the petitioner had submitted his objections on 04.05.2018. After receipt of the objections, the respondent, without considering the said objections 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 respondent and perused the records carefully.

5. Admittedly, a notice was issued by the respondent on 28.03.2018, for which objections were stated to be filed by the petitioner on 04.05.2018. But, in the impugned order, dated 24.05.2018, the respondent stated 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 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 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.

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.

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, according to the respondent, the petitioner has not submitted his objections, even after receipt of notice. Now, it is submitted that after passing of the impugned orders, the petitioner has submitted his objections and the respondent has received the same. As the respondent has passed the impugned orders, without providing an opportunity of personal hearing, this Court is inclined to set aside the impugned orders.

8. In view of the above, the impugned orders, dated 24.05.2018, passed by the respondent are set aside and the matter is remanded back to the file of the respondent. The 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 four 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.

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

Sd/-
Assistant Registrar (AD-I)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Commercial Tax Officer,
Karaikudi Assessment Circle,
Karaikudi,
Sivagangai District.

+ 4 CC TO M/s.BHARATHY KANNAN, ADVOCATE IN SR No. 87377 to 87380
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 87563

GCG
TE/RP/SAR-4 : 26/10/2018 : 4P/7C

Common Order made in
W.P(MD)Nos.20230 to 20233 of 2018
27.09.2018