BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2018

CORAM:

**THE HONOURABLE MRS.JUSTICE J.NISHA BANU**

W.P(MD)Nos.20369 to 20371 of 2018
and
W.M.P.(MD).Nos.18128 to 18130 of 2018

M/s.K.K.A.Enterprises,
rep. by its Partner Anupkumar Lohia,
No.70/4, 8 , 9 Alampatti Village,
Sattur Taluk. .. Petitioner in all these petitions

**Vs.**

The State Tax Officer (Main) (FAC),
Commercial Taxes Buildings,
Sattur. .. 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 in TIN 33875783820/2013-14, TIN 33875783820/2014-15 and TIN 33875783820/2015-16, respectively dated 30.04.2018, issued by the respondent and quash the same as arbitrary, illegal and against the principles of natural justice and direct the respondent to pass assessment orders afresh, after considering the representation, dated 17.10.2017, 28.03.2018 and 28.03.2018 respectively.

For Petitioner in all the petitions : Mr.S.Karunakar

For Respondent in all the petitions : Mr.R.Murugan, Additional Government Pleader

**COMMON ORDER**



These writ petitions have been filed by the petitioner challenging the revised assessment orders, dated 30.04.2018, passed by the respondent for the assessment years 2013-14, 2014-15 and 2015-16.

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 a dealer in granite and 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 13.03.2017 and 15.03.2017, the respondent had issued notices, dated 25.09.2017, pointing out certain differences in the purchases shown in Annexure - I of the other end dealer, for which the petitioner had submitted his objections on 17.10.2017. After receipt of the objections, the respondent, without providing an opportunity of personal hearing and without independent application of mind, 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 25.09.2017, for which objections were filed by the petitioner on 17.10.2017. The respondent, thereafter, 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, admittedly, the petitioner has submitted his objections. But, the respondent, after receipt of the said objections, has passed the impugned orders, without giving an opportunity of personal hearing. Therefore, on this ground alone, the impugned orders are liable to be set aside.

8. It is seen from the record that the respondent, without any independent application of mind on the petitioner's objections, has simply confirmed the proposal, by the impugned orders dated 30.04.2018. In the decision in **Narasus Roller Flour Mills Vs. C.T.O., Enforcement Wing, Sankagiri**, reported in **(2015) 81 VST 560**, a learned Single Judge of this Court has held as follows:

> "10.At the risk of repetition, this Court states that the Assessing Officer, under the Act, has been conferred powers to independently consider the matter, and, at best, the information furnished by the Enforcement Wing, or Inspecting Officer, could be considered to be in the nature of a first information, and based on such information, if the Assessing Officer proposes to issue a show cause notice, then he is required to call for explanation from the dealer, and then, it is incumbent upon the Assessing Officer to give his/her own independent reasons, and to pass orders, either accepting the case of the dealer, or rejecting it. However, this basic principle, as to how the assessment has to be made, has not been followed in the instant cases, and since the assessment has been made by the respondent / Assessing Officer, blindly accepting the proposal sent by the Deputy Commissioner (CT Enforcement South, the impugned orders have to be held to be not sustainable, calling for interference."



9. As stated in the above decision, in this case also, the respondent, without any independent application of mind and

without any giving any reasons for rejection of the petitioner's objections, has passed the impugned orders and therefore, the impugned orders are liable to be set aside on this ground also.

10. In view of the above, the impugned orders, dated 30.04.2018, passed by the respondent are 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 reasoned orders on merits and in accordance with law, within a period of six 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.

11. 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 State Tax Officer (Main) (FAC),
Commercial Taxes Buildings,
Sattur.

+ 2 CC TO Mr.S.KARUNAKAR, ADVOCATE IN SR Nos. 86623 & 86622
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 86698 to 86700

GCG
TE/SV/SAR-4 : 26/10/2018 : 4P/5C

Common Order made in
W.P(MD)Nos.20369 to 20371 of 2018 and
W.M.P.(MD).Nos.18128 to 18130 of 2018
25.09.2018