BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.20445 of 2018
and
W.M.P.(MD)No.18183 of 2018

Tvl.Sakthi Tractors,
Rep. by its Managing Partner,
S.Balaji .. Petitioner

Vs.

The State Tax Officer (CT),
Thanjavur - I Assessment Circle,
Thanjavur. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARI, calling for the records on the file of the respondent in TIN/33823824981/2012-13 dated 03.07.2018, served on 09.08.2018 and quash the same.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.D.Muruganantham, Additional Government Pleader

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ORDER

This writ petition is directed against the impugned order of the respondent, dated 03.07.2018, served on 09.08.2018, in and by which, revised order was passed directing the petitioner to pay a sum of Rs.8,80,050/- as tax and Rs.4,41,025/- as penalty.

2. The petitioner before this Court is a Company, engaged in the business of buying and selling of Mahindra Tractors, Spares & Implements and an assessee on the file of the respondent. For the assessment year 2012-13, the petitioner had filed the returns in time, which was also accepted and approved by the Department. While so, on 02.06.2018, the petitioner was served with a pre-revision notice dated 17.05.2018, from the respondent, citing some discrepancies regarding the business transactions with M/s.Mahindra & Mahindra Ltd, for which, according to the petitioner, their supplier, namely M/s.Mahindra & Mahindra Ltd has submitted a confirmation letter dated 02.08.2018 requesting to drop the proposal. The grievance of the petitioner is that in the impugned order dated 03.07.2018, which was served on 09.08.2018, there is no whisper as to the consideration of the confirmation letter submitted by their supplier. Moreover, without affording an opportunity of personal hearing to the petitioner, the present impugned order came to be passed and hence, the learned Counsel for the petitioner prays for allowing the present writ petition.

3. Learned Additional Government Pleader, on the other hand, would submit that the petitioner was issued with pre-revision notice dated 17.05.2018. But, the petitioner did not respond. Hence, having left with no other option, the respondent, after recording this

aspect, has proceeded with the matter and passed the impugned assessment order dated 03.07.2018. With regard to the confirmation letter of M/s.Mahindra & Mahindra Ltd., the learned Additional Government Pleader would submit that it was dated 02.08.2018, ie., after the passing of impugned order and therefore, he prays for dismissal of the present writ petition.

4. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

5. With regard to the confirmation letter submitted by M/s.Mahindra & Mahindra Ltd., as rightly contended by the learned Additional Government Pleader, the same was submitted after the passing of the impugned assessment order. It is also not in dispute that the petitioner has received the pre-revision notice, but did not file their objections. Even otherwise, it is mandatory on the part of the respondent to post the matter for personal hearing. As per the circular issued by the Head of the Department, pursuant to the recommendations issued by the Justice Ramanujam Committee, it is mandatory to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner. But, in the impugned order, there is no whisper as to the same.

6. In this context, 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 failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:

> *"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."*

7. On this sole ground, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned order, dated 03.07.2018, is set aside and the matter is remitted back to the respondent for fresh consideration. Since the matter itself is remanded, this Court feels that there is no impediment for the respondent in considering the confirmation letter submitted by M/s.Mahindra & Mahindra Ltd.

8. The petitioner is hereby directed to submit their objections, by way of representation, along with a copy of the confirmation letter submitted by their supplier, viz., M/s.Mahindra & Mahindar Ltd., within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing, within a period of two weeks from the date of receipt of a reply/representation from the petitioner and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent and put forth his contentions and after hearing the petitioner, the respondent shall pass appropriate orders, purely on merits, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the respondent shall record the same and pass orders, in accordance with law.

9. This writ petition stands allowed in the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AD-I)

/True copy/

Sub Assistant Registrar(CS-I)

To

The State Tax Officer (CT),
Thanjavur – I Assessment Circle,
Thanjavur.

+1cc to Mr.A.Chandrasekaran, Advocate, SR.No.88562 .

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and
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GK
KK/SV/SAR-1/13.11.2018/3P-3C