BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **11.10.2018**

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.21227 of 2018

and

W.M.P.(MD)No.19059 of 2018

Tvl.Anuj Trade Link Co.,
Rep. by its Proprietor,
R.Senthilkumar .. Petitioner

Vs.

The Assistant Commissioner (ST) (FAC),
Thiruparankundram Assessment Circle,
Madurai - 20. .. Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of CERTIORARIFIED MANDAMUS, calling for the records on the file of the respondent in TIN/33886233264/2017-18 dated 28.03.2018, quash the same and direct the respondent to pass order afresh after affording an opportunity to the petitioner to file their objections against the show cause notice dated 06.03.2018 and after verifying the books of accounts of the petitioner and after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.A.Chandrasekaran

For Respondent : Mr.R.Murugan,
Additional Government Pleader

ORDER

This writ petition is directed against the impugned order of the respondent, dated 28.03.2018, in and by which, according to the petitioner, revised order came to be passed for the assessment year 2017-18, even before the very expiry of the assessment year, ie., 31.03.2018 and without completing the original order of assessment as per Section 22 of the Tamil Nadu Value Added Tax Act, 2006.

2. According to the petitioner, they are a dealer in ceramic tiles and an assessee on the file of the respondent. For the subject

assessment year, without passing original order of assessment and without the very expiry of the assessment year, revised assessment order came to be passed. The learned Counsel for the petitioner would submit that they received a notice dated 06.03.2018 from the respondent in this regard, but, due to the ill health condition of the sole proprietor, they are not in a position to respond immediately. But, in the mean time, the impugned order came to be passed, without providing an opportunity of personal hearing. Therefore, the learned Counsel for the petitioner prays for allowing the present writ petition.

3. Mr.R.Murugan, learned Additional Government Pleader who takes notice for the respondent, on the other hand, would submit that the petitioner was issued with show cause notice dated 06.03.2018. But, the petitioner did not respond. Hence, having left with no other option, the respondent has proceeded with the matter and passed the impugned order dated 28.03.2018. He would further submit that since the order impugned is an appealable one, the petitioner ought to have preferred an appeal, instead of filing the writ petition and therefore, he prays for dismissal.

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

5. It is also not in dispute that the petitioner has received the show cause 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 28.03.2018, is set aside and the matter is remitted back to the respondent for fresh consideration.

8. Since the service of show cause notice dated 06.03.2018 is not in dispute, the petitioner is hereby directed to submit their objections, by way of representation 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(Records)

/True Copy/

Sub Assistant Registrar(CS I)

gk

To

The Assistant Commissioner (ST) (FAC),
Thiruparankundram Assessment Circle, Madurai - 20.

1CC TO MR. A. CHANDRASEKARAN, ADVOCATE SR 90257

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