BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.10.2018

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.(MD)No.21228 of 2018
and
W.M.P.(MD)No.19060 of 2018

M/s. Supreme Agencies,
Rep. by its Proprietor,
Abdul Jaffar .. Petitioner

Vs.

The Deputy Commercial Tax Officer (ST),
Pudukkottai - II Assessment Circle,
Pudukkottai. .. 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/33874123859/2013-14 dated 25.06.2018 and quash the same, as illegal, arbitrary and against the principles of natural justice.

For Petitioner : Mr.K.Soundararajan
For Respondent : Mr.R.Murugan,
Additional Government Pleader

ORDER

This writ petition is directed against the impugned order of the respondent, dated 25.06.2018, in and by which, revised assessment order came to be passed for the assessment year 2013-14.

2. According to the petitioner, they are a dealer for Videocon DTH and an assessee on the file of the respondent. Their turnover is below taxable limit and therefore, they are filing Form I-1. But, due to oversight, the petitioner failed to file Form I-1, on time, for the subject assessment year and the respondent, in the meantime, has issued a notice dated 12.01.2018, holding that based on the web report of other end dealer, the petitioner has effected purchase, which is over and above the taxable limit and therefore, proposed to assess the dealer under Section 22(4) of TNVAT Act along with penalty under Section 22(5) of TNVAT Act. Due to the

ill health condition of the proprietor, the petitioner is not able 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 12.01.2018. 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 25.06.2018. 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 dismissing the present writ petition.

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

5. It is 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 25.06.2018, is set aside and the matter is remitted back to the respondent for fresh consideration.

8. It is seen that the background in passing the impugned order is mismatch between particulars provided by the selling and purchasing end dealer. If that being the case, the respondent, while considering the matter afresh, shall conduct a thorough enquiry in consultation with the assessing officers of the other end dealer and if he, *prima facie*, is of the view that the returns of the petitioner deserves revision, then he has to issue show cause notice, calling for objections. Needless to say that the show cause notice, to be issued by the second respondent, has to include all the particulars, as per the Circular issued by the Commissioner of Commercial Taxes in Circular No.10 of 2015 dated 01.04.2015, keeping in mind the decision of this Court reported in ***[2017] 99 VST 343 (Mad)***. Thereafter, opportunity of personal hearing should be afforded to the petitioner, followed by which, the respondent shall pass appropriate orders, on merits and in accordance with law. The respondent shall complete the entire exercise within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that if the petitioner is dragging on the proceedings, by adapting delay tactics, it is open to the respondent to record the same and proceed further in the manner known to law.

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

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-I)

To

The Deputy Commercial Tax Officer (ST),
Pudukkottai - II Assessment Circle,
Pudukkottai.

+ 1 CC TO Mr.K.SOUNDARARAJAN, ADVOCATE IN SR No. 90112
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 90437

GK
TE/SKN/SAR-1 : 31/10/2018 : 3P/4C

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