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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2018
CORAM:
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.662 and 5581 of 2011
and
M.P.(MD).Nos.2 and 2 of 2011

M/s.Dhanalakshmi Fine Arts,
represented by its proprietor
Thiru P.Mahendran,
D.No.6-A, Puhazenthi Street,
Sivakasi,
Virudhunagar District. .. Petitioner in both WPs.

Vs.

1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk, Chennai – 600 005.

2.The Commercial Tax Officer-I,
C.T. Buildings,
Satchaiyapuram,
Sivakasi, Virudhunagar District. .. Respondents in both WPs.

PRAYER in W.P.(MD).No.662 of 2011:

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the assessment order passed by the 2nd respondent in the revision of Accessment order in his proceedings in TNGST 5960908/04-05, dated 31.08.2010 which was received by the petitioner on 04.10.2010 and quash the same.

PRAYER in W.P.(MD).No.5581 of 2011:

Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records relating to the B6 notice issued by the 2nd respondent to the Banks, such as Indian Bank, Indian Overseas Bank, Canara Bank, State Bank of Travancore, Tamil Nadu Mercantile Bank, Katholick Syrian Bank at Sivakasi, in Assessment No.TNGST 5960908/2004-05, dated 29.04.2011 and quash the same.

For petitioner in both the petitions : Mr.A.S.Mujibur Rahman

For respondents in both the petitions : Mr.D.Muruganandham, Additional Government Pleader

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ORDER

These writ petitions have been filed by the petitioner challenging the revised assessment order, dated 31.08.2010, passed by the 2nd respondent for the assessment year 2004-05 and the consequential Form-B6 order, dated 29.04.2011, issued by the 2nd respondent.

2.Since the issue involved in both the 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 registered dealer under the provisions of the Tamil Nadu General Sales Tax Act. He has been regularly filing returns. While so, the 2nd respondent issued pre-revision notice, dated 16.07.2010, proposing to revoke the exemption granted for Rs.64,83,681/- and Rs.6,98,183/-. According to the petitioner, as the second respondent has given only seven days time for submission his objections, the petitioner could not submit his objections. While so, the 2nd respondent has hurriedly passed the revised assessment order, dated 31.08.2010, without even providing an opportunity of personal hearing. Hence, the petitioner has filed W.P.(MD).No.662 of 2011 challenging the said order. Subsequently, the second respondent has issued Form-B6 order to the Banks at Sivakasi and thereby directed the banks to pay the due amount from the petitioner's account. Challenging the said order, the petitioner has filed W.P.(MD).No.5581 of 2011.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the records carefully.

5. Admittedly, the pre-revision notice, dated 19.07.2010, was issued by the second respondent to the petitioner by giving only seven days time for submitting his objections. Though the petitioner did not file his objections, the second respondent has passed the impugned order without even providing an opportunity of personal hearing. 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 order. That circular is binding on the respondents. 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, 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:

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> "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.
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> 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 not submitted his objections. Even then, the second respondent ought to have been provided an opportunity of personal hearing to the petitioner. But, the second respondent, in contravention of the said circular and the decisions cited supra, has passed the impugned order, without giving an opportunity of personal hearing. Therefore, the revised assessment order dated 31.08.2010 is liable to be set aside and consequently, the subsequent order dated 29.04.2011 passed by the 2nd respondent is also liable to be aside.

8. In view of the above, the impugned orders, dated 31.08.2010 and the consequential order dated 29.04.2011, passed by the second respondent are set aside and the matter is remanded back to the file of the second respondent for fresh assessment. The petitioner is directed to file his objections within a period of 15 days from the date of receipt of a copy of this order. On receipt of such objections, the second respondent is directed to provide an opportunity of personal hearing to the petitioner within two weeks and then, to pass reasoned order on merits and in accordance with law, within a period of two weeks thereafter. It is needless to say that if the petitioner does not cooperate with the enquiry, the second respondent is at liberty to pass appropriate order with the available records.

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

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar(CS-IV)

To
1.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam,
Chepauk,
Chennai - 600 005.

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2.The Commercial Tax Officer-I,
C.T. Buildings,
Satchaiyapuram,
Sivakasi,
Virudhunagar District.

+2CC to Mr.A.S.Mujibur Rahman, Advocate, SR.No. 88172 ,88170
+1CC to the Special Government Pleader SR.No.88192

W.P(MD)Nos.662 and 5581 of 2011
01.10.2018

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ES/SKN/RSK/SAR 4/31.10.2018/4P/6C

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