IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.02.2019

CORAM
THE HON'BLE Dr. JUSTICE ANITA SUMANTH

W.P.Nos.3924, 3928, 3930, 3931, 3934, 3936, 3939, 3941, 3942, of 2019
and
W.M.P.Nos.4351, 4355, 4357, 4358, 4362, 4364, 4368, 4371, 4373, 4169, 4172, 4174, 4176, 4179, 4184 & 4185 of 2019

Tvl.Swasthya Retirement Homes Pvt.Ltd., ...Petitioner

--Vs--

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle,
Pollachi ...Respondent

PRAYER in WPs: Writ Petitions filed under Article 226 of the Constitution of India praying for a writ of Certiorari to call for the records in the impugned orders of assessment in TIN: 33282285888/2011-12 to 2015-16 and in TNTLH LH/2011-2012 to-2013-14 and 2015-16 (A1/1817/2017)dated 03.01.2019 and quash the same.

For Petitioner : Ms.Aparna Nandakumar

For Respondent : Mr.M.Hariharan
Additional Government Pleader

O R D E R

This batch of writ petitions challenge orders of assessment passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2011-12 to 2015-16 and the Tamil Nadu Tax on Luxuries Act, 1981 for the periods 2011-12 to 2013-14 and 2015-16.

2. The impugned orders are all dated 03.01.2019. The sole ground on which the assessments have been challenged before me is a lack of effective hearing and violation of the principles of natural justice prior to passing of the same. Reliance is placed on a Circular passed by the Commissioner in Circular No.3/19 dated 18.01.2019 in support of the aforesaid contention.

3. Heard the submissions of Ms.Aparna Nandakumar, learned counsel for the petitioner and Mr.Hariharan learned Additional Government Pleader for the respondent.

4. A perusal of the impunged assessment orders indicate that the place of the business of the writ petitioner was inspected by the Officials of the Enforcement Wing on 28.03.2017. Various irregularities appear to have been noticed by the officials based on which proposals for assessment were given to the assessee by way of pre-assessment notices dated 17.11.2017 received by the petitioner on 28.11.2017. The dealers filed a reply dated 05.12.2017 to the pre-assessment notices seeking 15 days time to take legal advise, collate the records that had been sought for and file their memorandum of objections. On 12.02.2018, detailed objections to each point raised in the proposals were filed by the petitioner. In conclusion, the petitioner sought as follows:

> 'In case, if your office is intend to decline our prayer and to pass order(s) by overruling our present memorandum, we request you to quote the reason(s) as to why you were unable to drop the proposal with reasonable and meaning full opportunity of personal hearing to hear your arguments and for submission of written objection (s)/counter(s) from our side, as required by the decision of the Honorable Apex Court reported in 14 TNCTJ 220 (DB) Tvl.SRC Projects Pvt. Ltd. V. The Commissioner of Commercial Taxes and others.'

5. As requested by the petitioner, opportunity of personal hearing was granted on 27.12.2018 vide notice dated 11.12.2018. However, the petitioner vide letter dated 22.12.2018 sought further time and adjournment of the matter to after 14.02.2019 on the ground that the person concerned was travelling and the authorised representative required his assistance to prepare the matter.

6. The Assessing Authority rejected the request of the petition as above, being of the view that the very fact that the assessee had requested an adjournment would indicate that there were no records in support of their contentions available with them. He then proceeded to complete the assessments taking into account the objections filed by the petitioner in writing. Thus no personal hearing as sought for by the petitioner was granted.

7. The Special/Principal Commissioner, Commercial Taxes Department has time and again reiterated the importance of a proper and satisfactory opportunity of hearing being afforded to the assessee prior to completion of proceedings for assessment/other proceedings under the provisions of the Act.

8. Circular No.3/2019 dated 18.01.2019 of the Additional Chief Secretary/Commissioner of State Tax sets out detailed instructions to the Assessing Officers in regard to the manner of conduct of proceedings. The Circular records earlier circulars being Circular in Q3/3259/2010 dated 14.6.2010; Q3/39391/2012 dated 12.12.2012; Q1/281/2014 dated 28.01.2014 and Q1/16155/2015 dated 12.06.2015 passed along similar lines.

9. The sum and substance of the Circulars is that assessments are not expected to be blindly completed by the Assessing Officer enhancing the turnover returned by the assessee based on the proposals of the Enforcement Department but should reflect application of mind as well as due opportunity afforded to the assessee prior to finalisation thereof.

10. Circular Acts Cell VI/13234/2001 dated 20.04.2001 specifically emphasizes the requirement of fair opportunity and adherence to the principles of natural justice. At paragraph 2 thereof, the Commissioner states as follows:

> ?. Fair opportunity is to be given to the assessee and judicial consideration given to the representations, evidences and materials furnished by him. But personal hearing need not be given unless the statute requires it (eg.Section22(2)) or the assessee asks for it.

11. The Division Bench of this Court in the case of Tvl.Src Projects Private Limited vs The Commissioner Of Commercial Taxes 2010(33) VST 333 (Mad), states thus:

> 11. Before dealing with those questions, this Court proposes to consider a few authorities on the content of the expression reasonable opportunity to show cause. It may be true if the provision of reasonable opportunity to show cause is considered bereft of the circular, then it may not be held that it includes an opportunity of personal hearing. But then in a case where the question involved is one of determination of certain factual disputes, which are a bit complex and not free from controversy, the Court has to consider whether principles of fairness would encompass personal hearing within the concept of reasonable opportunity to show cause under Section 16(1)(a) of the said Act.
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> 12. Reference in this connection may be made to Professor Wades treatise on Administrative Law (9th Edition). At page 517 of the said treatise the learned author has emphasized that a hearing will normally be an oral hearing. But, in some cases, it is sufficient to give an opportunity to make a representation in writing provided that no adverse materials are disclosed and further the demands of fairness are sufficiently met.
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> 13. Similar views have been expressed in De.Smiths Judicial Review of Administrative Action, (6th Edition) at page 397. The learned author opined that a fair hearing does not necessarily mean that there must be an opportunity to be heard orally, but one is

> entitled to an oral hearing where fairness requires that there should be such hearing. But, fairness does not require that there should be an oral hearing in every case. However, the learned author referred to the decision in Sengupta Vs. Holms, (2002) EWCA Civ 1104 at (38) and quoted the views of Laws L.J. where the learned Judge held that central place is accorded to oral argument in our common law adversarial system. The learned Judge further said that ..this I think is important, because oral argument is perhaps the most powerful force there is, in our legal process, to promote a change of mind by the judge. That judges in fact change their minds under the influence of oral argument is not an arcane feature of the system; it is at the center of it (See pages 396 and 397 of the book). ....
>
> 18. ...... In the instant case also the ambit of reasonable opportunity of showing cause under Section 16(1)(a) must be interpreted in line with the said Circular where it has been provided in a case where the assessee demands for oral hearing such oral hearing should be given. The said Circular has been issued by the Commissioner who has to administer the provisions of the said Act.

12. Despite the aforesaid circulars that are being issued from time to time it is seen that the orders of assessment challenged before this Court are in blatant contradiction/violation of the instructions contained therein. Even in the present case though a specific request for personal hearing is made by the assessee, the assessments have been completed on the assumption that the assessee has no material in support of its stand and without the Assessing Authority adducing any reason whatsoever for arriving at such a presumption.

13. In the light of the above discussion, the assessments are set aside. The assessee shall appear before the Assessing Authority at the first instance on 15.02.2019 at 2.30 p.m. along with all materials in support of its returns of turnover. Orders shall be passed by the Assessing Officer within a period of one (1) month from the date of conclusion of the personal hearing.

14. These writ petitions stand disposed of in the above terms. Consequently, connected miscellaneous petition is also closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ska/sl

To

The Assistant Commissioner (ST)
Pollachi Rural Assessment Circle,
Pollachi

+1cc to M/s.Aparna Nadakumar, Advocate, S.R.No.12109
+1cc to the Government Pleader(Taxes), S.R.No.12344

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RSK(CO)

rrs 14/02/2019