BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 15.07.2019
CORAM
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.10758 to 10761 of 2012
and
M.P(MD)Nos.1 to 1 of 2012

M/s.A.J.Square Inc.,
Rep. by its Partner J.Sumathi,
No.1-12, Vilacheri Main Road,
Vilacheri, Madurai. ... Petitioner in all W.Ps'

Vs.

The Assistant Commissioner (CT) (FAC),
Madurai Rural (South),
Madurai. ... Respondent in all W.Ps'

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorarified Mandamus, to call for the records in TIN.Nos.33165163944/2006-07, 33165163944/2007-08, 33165163944/2008-09 and 33165163944/2009-10 respectively dated 01.06.2012 on the file of the respondent and quash the same as illegal, arbitrary, against the principles of natural justice and contrary to Section 5 of the Central Sales Tax Act, 1956 and direct the respondents to pass fresh assessment order by considering the reply dated 28.05.2012 filed by the petitioner.

For Petitioner (in all W.Ps') : Mr.S.Karunakar

For Respondents (in all W.Ps') : Mrs.J.Padmavathy Devi, Special Government Pleader.

COMMON ORDER

These Writ Petitions relate to the periods 2006-07, 2007-08, 2008-09 and 2009-10 and challenge orders of assessments passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act'), dated 01.06.2012.

2.The grievance of the petitioner is that the impugned orders have been passed in violation of the principles of natural justice. The petitioner has also made submissions with regard to the merits of the matter, which I am not inclined to refer to in the light of my conclusion at paragraph No.6 as regards the argument relating to violation of principles of natural justice.

3.The petitioner points out that it, along with the counsel, had appeared before the Assessing Officer on 28.05.2012 in response to a pre-revision notice dated 09.04.2012. According to the petitioner, written submissions were filed on that day along with supporting documents.

4.Mrs.J.Padmavathy Devi, learned Special Government Pleader states that the written submissions have been received by the authorities only on 06.06.2012, after passing of the impugned orders. According to the petitioner, the Assessing Authority had received their submissions on 28.05.2012 itself and had assured them, they may appear for personal hearing on 04.06.2012; however, the Assessing Authority passed the impugned orders, even prior to the date fixed for personal hearing.

5.These submissions are made only orally and there is nothing in writing to confirm the receipt of written submissions on 28.05.2012 or the personal hearing date to be fixed on 04.06.2012. In fact, the latter submission in regard to personal hearing does not even figure in the affidavit filed by the petitioner.

6.Be that as it may, the fact remains that no personal hearing has been granted in this matter. The pre-revision notice only calls for filing of objections.

7.The Special Commissioner and Commissioner of Commercial Taxes has, time and again, reiterated that Assessing Officers should afford an opportunity of personal hearing to the assessees prior to completion of assessment proceedings, irrespective of whether they seek an opportunity of hearing or not. This Court has also consistently taken the view that such opportunity would include an opportunity of personal hearing.

8.In the light of the aforesaid discussion, the impugned assessment orders are set aside. The assessee will appear before the Assessing Officer on 09.08.2019 at 10.30 a.m., without any further notice been received in this regard. After hearing the petitioner and consideration of all materials that may be produced by it, orders of assessment shall be passed *de novo* by the Assessing Authority within a period of four weeks from the date of conclusion of personal hearing.

9.These Writ Petitions are allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-   )

To

The Assistant Commissioner (CT) (FAC),
Madurai Rural (South),
Madurai.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-75501[F] dated 16/07/2019)

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ES/31.07.2019/3P/3C