BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.3638 of 2013

Tvl.Ganesa Agencies ... Petitioner

Vs.

The Commercial Tax Officer,
Munichalai Road Assessment Circle,
C.T.Buildings,
Dr.Thanagaraj Salai,
Madurai 625 020. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari calling for the records of the respondent in TIN No.33204961192/2010-2011 dated 31.01.2013 and quash the same as illegal, arbitrary and against the principles of natural justice.

For Petitioner :Mr.K.Soundararajan

For Respondent :Mrs.J.Padmavathy Devi
Special Government Pleader

ORDER

The petitioner assails an order of assessment dated 31.01.2013 for the period 2010-2011 on the ground that the assessment has been finalized without affording the petitioner adequate opportunity or any opportunity at all as required by law.

2. Admittedly, a pre-assessment notice was issued to the petitioner on 30.11.2012. Adjournment was sought by letter dated 20.12.2012 to file objections which request was granted by the Officer. On 28.01.2013, the petitioner has yet again sought adjournment on the ground that the counsel engaged to appear in the matter was travelling. This request for adjournment has admittedly been received by the Officer in so far as the letter figures in the assessment itself. However, without conveying to the petitioner his intention to reject the request, the officer merely passed the impugned order dated 31.01.2013 confirming the pre-assessment proposals.

3. The petitioner/dealer could very well have been awaiting notice of hearing on the mistaken assumption that the requisition for adjournment had been accepted, while in fact the Assessing Authority proceeds to pass an order rejecting the request as part of the order of assessment itself. This is not acceptable and the officer is bound to convey to the dealer his decision on a request made for adjournment. The petitioner thus has not been afforded an effective opportunity to object to the pre-assessment proposals. Moreover the pre-assessment notice itself only calls for objections to be filed and thus, admittedly, in this case, no notice calling for a personal hearing of the matter has been issued. Thus on both counts the impugned order of assessment should go, and stands quashed.

4. The petitioner will appear before the Assessing Authority on Wednesday 07.08.2019 at 10.30 a.m and no further hearing notice need be issued in this regard. All materials in support of the petitioners' contentions will be produced before the Assessing Authority and after hearing the petitioner and considering the materials filed, orders *de novo* will be passed within a period of four weeks from date of conclusion of the personal hearing.

5. Incidentally I may state that the order of assessment that runs in excess of forty (40) pages contains only ten (10) lines by way of the operative portion. The remainder composes extracts of slips that have been found by the inspecting team. An assessment of this nature does not satisfy the parameters of an order of assessment as per the provisions of the Act and will necessarily have to contain reasons for the adjustiments effected to returned turnover.

6. The writ petition is allowed in the above terms. No costs.

Sd/-

Assistant Registrar (CO)

/ True Copy /

Sub Assistant Registrar(CS-)

To,
The Commercial Tax Officer,
Munichalai Road Assessment Circle,
C.T.Buildings,Dr.Thanagaraj Salai,Madurai 625 020.

+1CC to M/s.S.RAJA JEYA CHANDRA PAUL,Advocate, SR-75528,
+1 CC to M/s.SPL GP (SR-75760[F] dated 17/07/2019)

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CM
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