BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.06.2019
CORAM:
THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)No.14125 of 2019
and
W.M.P(MD)No.10587 of 2019

Lourdes Matha Cashew Industries,
Rep. By its Proprietor,
Jobrun G.Vargese,
16.80 B, Vattakottai,
Mankarai Post,
Kanyakumari District. ... Petitioner

Vs.

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent herein in TIN No.33816184269/2016-17, dated 21.05.2019 and quash the same and consequently direct the respondent to consider the reply dated 02.01.2018 submitted to the pre-assessment notice and grant to the petitioner the opportunities required in the reply and a personal hearing and pass orders according to law.

For Petitioner : Mr.M.Azeem

For Respondent : Mr.A.Thiyagarajan,
Government Advocate.

ORDER

The Writ petitioner challenges an order of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') on the short ground of violation of principles of natural justice, since personal hearing was not afforded to it prior to completion of assessment.

2.Mr.A.Thiyagarajan, learned Government Advocate has accepted notice on behalf of the respondent.

3.By consent of both parties, the Writ Petition is disposed of even at the stage of admission.

4.The assessing authority has issued a pre-revision notice on 13.12.2017 pursuant to an inspection that had taken place in the business premises of the petitioner. The pre-revision notice sets out various proposed modifications to the turnover returned submitted by the petitioner and in conclusion, permits objections to be filed to the proposals as well as a personal hearing 'within 15 days of receipt of this notice.

5.A detailed reply has been filed by the petitioner dated 02.01.2018, upon conclusion of which, the petitioner specifically seeks an opportunity to cross-examine one Smt.Manimozhi, who was the then Assistant Commissioner, who had headed the inspection and recorded a statement. The petitioner also sought an opportunity of personal hearing to produce the accounts and records to establish its case.

6.While this is so, the impugned order dated 21.05.2019 has been passed ignoring both requests of the petitioner as aforesaid viz., to cross-examine as well as for affording an opportunity of personal hearing. This prejudices the rights of the petitioner and amounts to gross violation of principles of natural justice.

7.The Special Commissioner / Commissioner of Commercial Taxes Department has, vide several Circulars, been reiterating the importance of adherence to the principles of natural justice by the Assessing Officer, even in cases where such opportunities were not sought (see Circular dated 20.04.2001 in Acts Cell VI/13234/2001 and Circular No.32 of 2015 dated 17.08.2015).

8.Moreover, the indicating of a range of days for appearance or filing of objections can hardly amount to proper opportunity as neither party can be expected to anticipate the time of personal hearing and mutual convenience. Thus personal hearing, to be effective, has to be fixed by date and time. The impugned order is thus seen to be bad in law for violation of the principles of natural justice and I, accordingly, set aside the same. The petitioner will appear before the assessing authority on 10.07.2019 at 10.30 p.m., along with its reply to the pre-assessment proposals. Adequate opportunity of hearing shall be granted by the Assessing Officer, who shall pass orders *de novo* and in accordance with law, within a period of six weeks from the date of conclusion of personal hearing. No further notice is necessary, as this order has been communicated to the parties in open Court.

9.The Writ Petition is allowed in the aforesaid terms. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

To

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District.

+1 CC to M/s.M.AZEEM, Advocate (SR-71836[F] dated 27/06/2019)

+1 CC to M/s.SPL GP (SR-72534[F] dated 01/07/2019)

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27.06.2019

PS
KK/SAR/11.07.2019/3P-4C