BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P(MD)Nos.1865 to 1867 of 2014

M/s.Mahadev Granite,
Rep. by its Proprietor S.Rooparam,
#44/1A, 33, 3A, 3B, Shivagangai Main Road,
Poovanthi Village,
Sivagangai District. ... Petitioner in all W.Ps'

Vs.

The Assistant Commissioner,
Commercial Taxes Department,
Tallakulam Assessment Circle, Madurai,
Madurai District. ... 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 pertaining to the impugned order passed by the respondent in TIN Nos.33784883370/2009-10, dated 22.11.2013 33784883370/2010-11, dated 18.11.2013 and 33784883370/2011-12 dated 18.11.2013, quash the same and direct the respondent to afford an opportunity of personal hearing to the petitioner.

For Petitioner (in all W.Ps') : Mr.Muthusubramanian for Mr.N.C.Ashok Kumar

For Respondents (in all W.Ps') : Mr.R.Murugan, Additional Government Pleader.

COMMON ORDER

The Writ Petitioner challenges three orders of assessment passed under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act') for the periods 2009-10, 2010-11 and 2011-12.

2.Though various grounds have been raised assailing the impugned orders, before me, the only ground urged is the violation of principles of natural justice, contending that an opportunity of personal hearing was not extended to the petitioner prior to conclusion of proceedings.

3.This is a matter where there had been an inspection conducted by the Enforcement authorities. The orders of assessment are based substantially on the basis of the proposals of the Enforcement Wing.

4.A pre-assessment notice was issued, in response to which, the petitioner had filed a letter dated 10.10.2013 requesting time upto October, 2013 for filing objections. Again by letters, dated 01.11.2013 and 21.11.2013 (no acknowledgment is available on file for the latter) fifteen days initially and another fifteen days thereafter was sought to file objections. Admittedly, no objections have been filed till the date of conclusion of assessment. Thus, the Assessing Authority has proceeded on the basis that the petitioner has nothing to say. However, admittedly, no opportunity of personal hearing has been granted to the petitioner prior to completion of the proceedings.

5.This Court, in a slew of decisions and the Principal Commissioner and Commissioner of Commercial Taxes, vide Circulars have reiterated on several occasions, the importance, nay, mandate for a personal hearing, prior to completion of assessment proceedings.

6.In the present case, though the petitioner has not filed any objections, it has sought some time to do so. The attitude of the assessee thus cannot be said to be totally non-co-operative. Moreover, admittedly, the authority concerned has neglected to call upon the assessee for a personal hearing prior to completion of the assessment.

7.In the aforesaid circumstances, these Writ Petitions are allowed and the impugned orders set aside. The petitioner will appear before the Assessing Authority on 31.07.2019 at 10.30 a.m. No separate notice will be issued and this order constitutes sufficient notice. After hearing the petitioner and considering all materials that may be circulated by it, orders of assessment shall be passed *de novo* by the Assessing Officer within a period of four weeks from date of conclusion of personal hearing. It is made clear that if the assessee does not appear before the Assessing Officer, *de novo* orders may be passed by the Assessing Authority in consideration of the materials available on record. No costs.

Sd/-

Assistant Registrar (C.O)

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner,
Commercial Taxes Department,
Tallakulam Assessment Circle, Madurai,
Madurai District.

+3 CC to M/s.N.C.ASHOK KUMAR, Advocate SR-75260.
+1 CC to SPL GP SR-75414.

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