BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 30.09.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P.(MD) No.21000 of 2019
and
W.M.P.(MD).No.17595 of 2019

M/s.Phota Park
rep. by its Proprietor,
No.52-C/5B/5C, Raja Buildings,
Tirunelveli-627 001. ... Petitioner

vs.

The Assistant Commissioner (ST) (FAC)
Tirunelveli Junction,
Tirunelveli. ... Respondent

PRAYER:

Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified mandamus, to call for the records of the respondent in TIN 33605541420/2014-15 dated 31.8.2019 and to quash the order passed therein and to direct the respondent to pass fresh orders as per the directions of the Madras High Court for the mismatch issued based on departmental WEBSITE after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromoni
For Respondents : Mr.P.Kannithevan
Additional Govt. Pleader

O R D E R

Mr.P.Kannithevan, learned Additional Government Pleader takes notice on behalf of the respondent.

2.By consent of both sides, the writ petition itself is taken up for final disposal.

3.The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act (hereinafter referred as "TNVAT Act"). The respondent issued pre-assessment notice, dated 07.08.2019, on the basis of mismatch obtained in web report. The said pre-assessment notice was despatched on 26.08.2019. Surprisingly, without giving an opportunity of personal hearing to the petitioner, an assessment order came to be passed on 31.08.2019. Challenging the same, the petitioner has filed the present writ petition.

4.The learned Counsel for the petitioner would also submit that the assessment order came to be passed without giving an opportunity of personal hearing to the petitioner. It is mandatory for the assessing authority to conduct an enquiry and thereafter, issue proposal, as held by this Court in ***Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai*** reported in ***2017 (99) VST 343***. He would further submit that the respondent has not given any details to the petitioner about the mismatch turnover, but levied taxes against the provisions of law.

5.Hence, it is well-settled that even if a dealer does not file his objection, opportunity of personal hearing should be given before passing any order, even if it is not asked for.

6.In the instant case, after despatching the pre-assessment notice, on 26.08.2019, the final assessment order came to be passed on 31.08.2019 within a short spell of 4 to 5 days and that itself shows that opportunity of hearing was not given to the petitioner. On the ground of violation of principles of natural justice, the assessment order, in TIN.No.33605541420/14-15, dated 31.08.2019 is set aside and the matter is remanded back to the respondent for the purpose of complying with principles of natural justice. The respondent is directed to provide all the materials, which are required by the petitioner and invite objections giving 15 days of time and thereafter, afford an opportunity of personal hearing and pass orders.

7.Accordingly, the writ petition is allowed as indicated above. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

Sub Assistant Registrar(CS)

vs

<u>To</u>

The Assistant Commissioner (ST) (FAC)
Tirunelveli Junction,
Tirunelveli
+1 CC to M/s.C.BAKTHASIRONMANI, Advocate (SR-90466[F] dated 30/09/2019)
+1 CC to M/s.SPL GP (SR-90866[F] dated 01/10/2019)
VS

<u>W.P.(MD) No.21000 of 2019</u>
30.09.2019

KK/SAR/30.10.2019/2P-4C/