BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2019

CORAM

THE HON'BLE DR.JUSTICE ANITA SUMANTH

W.P(MD).Nos.9344 and 9345 of 2017
and WMP(MD)Nos.7121 and 7122 of 2017

In W.P(MD) No.9344 of 2017:
Tvl.Sri Venkateswara Poly Board,
Represented by its Propx
V.Kalavathy ...Petitioner
(In both writ petitions)

Vs.

1.The State of Tamil Nadu,
Represented by it's Secretary to
Government, Department of Commercial Taxes,
Fort St.George, Beach Road,
Chennai - 600 009.

2.The Commissioner of Commercial Taxes,
2nd Floor, Elilagam, Chepauk,
Chennai - 600 005.

3.The Commercial Tax Officer,
Sattur,
Viruthunagar - District. ...Respondents
(In both writ petitions)

Prayer in W.P(MD)No.9344 of 2017 :
Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in his proceedings in TIN 33385782198/2013-14 dated 19.01.2017 (received by the petitioner on 25.01.2017) and quash the same and to direct the third respondent to pass fresh orders after the verification of the accounts of the petitioner and after affording an opportunity of personal hearing.

Prayer in W.P(MD)No.9345 of 2017 :
Writ Petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in his proceedings in CST 502208/2013-2014 dated 25.01.2017 (received by the petitioner on 30.01.2017 and quash the same and to direct the third respondent to pass fresh orders after verification of the accounts of the petitioner and after affording an opportunity of personal hearing.

In both writ petitions:

For petitioner : Mr.A.S.Mujibur Rahman

For Respondents : Mr.A.Thiyagrajan
Government Advocate

COMMON ORDER

The short point agitated in the writ petitions is lack of personal hearing afforded to the petitioner prior to finalization of the impugned assessment proceedings for the period 2013-14 by orders dated 19.01.2017 and 25.01.2017 passed in terms of the Tamil Nadu Value Added Tax Act, 2006 (in short 'Act').

2. Mr.Thiyagarajan, learned Government Advocate fairly draws attention to paragraph No.5 of the counter, extracted hereunder:

> 5.I submit that the Commissioner of Commercial Taxes in Circular No.7 of 2014 dated 03.02.2014 has issued instruction, that personal hearing should be accorded if requested by the petitioner. The petitioner has not sought for any personal hearing. Therefore, the decisions cited by the petitioner is not applicable now since the petitioner has not requested personal hearing. Therefore, the question of personal hearing without the request of the petitioner could not be given.

3. In the light of the admitted position that personal hearing has not been granted despite specific Departmental instructions/Circulars to the effect that the principles of natural justice should be followed before finalization of assessments, I am inclined to set aside the impugned orders.

4. Personal hearing before the Assessing Officer is fixed on Thursday i.e 05.09.2019 at 10.30 a.m and no further notice need be issued by the Assessing Officer in this regard. An order of assessment shall be passed de novo after hearing the petitioner and considering the submissions to be made by it. The said exercise shall be completed within a period of four weeks from date of conclusion of personal hearing.

5. In fine, these writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To,

1. The Secretary to Government,
   State of Tamil Nadu,
   Department of Commercial Taxes,
   Fort St.George, Beach Road,
   Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Elilagam, Chepauk,
   Chennai - 600 005.

3. The Commercial Tax Officer,
   Sattur,Viruthunagar - District.

+2 CC to M/s.MOHAMED IBRAHIM, Advocate (SR-82316[F] dated 20/08/2019)

+1 CC to M/s.SPL GP (SR-82464[F] dated 20/08/2019)

W.P(MD).Nos.9344 and 9345 of 2017
and WMP(MD)Nos.7121 and 7122 of 2017
19.08.2019

CM
JMN(10.09.2019) 3P : 7C