BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 31.10.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ
W.P(MD)No.22942 of 2019
and
WMP(MD)Nos.19691 and 19692 of 2019

M/s.Kannan Steel
rep.by its Proprietor
T.K.Madhu .. Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Buildings,
Reserve line Road,
Palayamkottai,
Tirunelveli.

2.The Assistant Commissioner (ST) (FAC),
Tuticorin-III Assessment Circle,
Tuticorin. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings passed by the 2nd respondent in TIN No.33885923058 / 2015-16 and to quash the order dated 06.11.2017 as the same is illegal and also passed by grossly violating the principles of natural nustice and also to direct the 2nd respondent to pass order afresh by considering the objections dated 02.11.2017 filed by the petitioner after making proper enquiry as contemplated Under Section 27 of the TNVAT Act.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Mrs.J.Padmavathi Devi, learned Special Government Pleader, takes notice on behalf of the respondents. By consent, the writ petition is taken up for final disposal at the stage of admission itself.

2.Challenge in this writ petition is to the assessment order passed by the second respondent in TIN No.33885923058 / 2015-16, dated 06.11.2017. According to the petitioner, no notice was given to him and personal hearing was not afforded and therefore, the impugned order is violative of principles of natural justice.

Reference No.2 of the impugned order shows that a letter dated 25.09.2017 was sent to the petitioner and it was received on 20.10.2017. Since the petitioner has not filed his objections, the proposal made by the respondent was confirmed. In fact, the petitioner has filed his objections on 02.11.2017 and the same was acknowledged by the second respondent on 03.11.2017. In spite of filing such objections, there is no reference to the same.

3.On a perusal of the pre-revision notice dated 25.09.2017, it is seen that 15 days time was granted for filing objections. The notice was served on the petitioner on 20.10.2017. Fifteen days period got over by 05.11.2017 and the impugned order was passed on 06.11.2017. Section 27 of TNVAT Act, 2006, mandates personal hearing before passing orders. Even assuming that objections are not filed, on the expiry of 15th day, an opportunity of personal hearing should have been given. But it was not afforded to the petitioner. Curiously objections dated 02.11.2017 was filed by the petitioner and it was acknowledged by the 2nd respondent on 03.11.2017. In that event, opportunity of hearing must have been provided. Even assuming that it is not provided, the objections should have been considered, while passing assessment order.

4.It is well settled that even if objection is not filed and even when an opportunity of personal hearing is not sought for, it is mandatory on the part of the assessing authority to provide an opportunity of personal hearing, as per the dictum of this Court in ***Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai*** reported in ***2017 (99) VST 343***.

5.In the instant case, *ex facie*, principles of natural justice is not followed. Hence, without going into the merits of the case, the impugned order dated 06.11.2017 passed by the second respondent is set aside and the matter is remanded back to the assessing authority/second respondent herein for consideration afresh. The assessing authority shall afford an opportunity of personal hearing to the petitioner and pass orders on merits, within a period of four weeks from the date of receipt of a copy of this order.

6.The writ petition is allowed accordingly. No costs. Consequently, WMP(MD)Nos.19691 and 19692 of 2019 are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Buildings,
Reserve line Road,
Palayamkottai,
Tirunelveli.

2.The Assistant Commissioner (ST) (FAC),
Tuticorin-III Assessment Circle,
Tuticorin.

+1 CC to M/s.A.SATHEESH MURUGAN, Advocate SR-95021.
+1 CC to SPL GP SR-95107 & SR-95531.

W.P.(MD)No.22942 of 2019
31.10.2019

CS(14.11.2019) 3P 5C