BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.11.2019
CORAM:
THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.(MD)No.25371 of 2019
and
WMP(MD)Nos.21933 & 21935 of 2019

Tvl.DOT MOBILE CARE
rep.by its Proprietor
S.Janarthanan .. Petitioner

Vs.

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai – 600 005.

2.The Deputy Commercial Tax Officer,
Palani - I Assessment Circle,
Commercial Tax Office,
No.12, Ramalingam 1st Cross Street,
Shanmugapuram,
Palani – 621 602. .. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for records pertaining to the impugned proceedings of the 2nd respondent in TIN/33205282165/2014-15 dated 23.03.2018 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

This writ petition is filed challenging the impugned proceedings of the second respondent in TIN/33205282165/2014-15, dated 23.03.2018.

2.Mrs.S.Srimathy, 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.

3.The petitioner is a dealer in sales and service of mobile phones and its accessories. He filed his returns for the assessment year 2014-2015. On scrutiny of reports, it was found that there is some suppression of purchase of goods and it was not reflected in the return and therefore, *ex parte* assessment order was passed. Since opportunity of personal hearing was not granted, the petitioner has approached this Court by filing this writ petition.

4.The learned Counsel for the petitioner would submit that the assessment order came to be passed on cross-verification of the web report and on the basis of the mismatch and therefore, 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***. Further, this Court, in similar circumstances, in W.A.Nos.234 to 240 of 2015, dated 16.03.2018, has held at paragraph No.10 as under:

> "10. ....We make the position clear that the failure to submit objection to the pre-assessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."

5.Considering the materials on record and also on a perusal of the impugned order, it is seen that the impugned order came to be passed without receiving any objections and without affording an opportunity of personal hearing. The Head of the Department has given clear instructions as to the procedures to be followed by the Assessing Officer. It is expected that the assessing authority shall issue notice calling for objections and if required, grant a further time for enabling the dealer to file his objections and after receipt of the objections, to afford an opportunity of personal hearing. The instructions with regard to the same would clearly mandate, whether objection was filed or not, it is mandatory to issue a notice of personal hearing. But, in the case on hand, the procedures are flouted by the respondents. Now, the petitioner is also seeking the records which were obtained through web report by the respondents.

6.In such circumstances, the impugned order dated 23.03.2018 was passed in violation of principles of natural justice. Further, the request of the petitioner is that the assessing authority shall follow 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*** that before issuing the proposals, the authority shall convince himself by conducting an enquiry as to the mismatch.

7.Therefore, while setting aside the impugned order passed by the second respondent in TIN/33205282165/2014-15 dated 23.03.2018 and remanding the matter back a direction is issued to the second respondent to follow the guidelines given in the judgment of this

Court in ***Tvl.JKM Graphics Solutions Private Limited v. Commercial Tax Officer, Vepery Assessment Circle, Chennai*** reported in ***2017 (99) VST 343*** and provide necessary documents to the petitioner for the purpose of filing his objections. After receiving the objections, the second respondent shall fix a date for personal hearing and pass orders on merits. Such exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

8.The writ petition is disposed of accordingly. No costs. Consequently, WMP(MD)Nos.21933 and 21935 of 2019 are closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2.The Deputy Commercial Tax Officer,
Palani - I Assessment Circle,
Commercial Tax Office,
No.12, Ramalingam 1st Cross Street,
Shanmugapuram,
Palani - 621 602.

+1 CC to Mr.B. ROOBAN, Advocate (SR-102061[F] dated 28/11/2019)

+1 CC to SPL GP (SR-102663[F] dated 29/11/2019)

W.P.(MD)No.25371 of 2019
28.11.2019

VB(13.01.2020) 3P 5C