BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2019

CORAM:

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.(MD)No.11139 and 11141 of 2017
and
W.M.P.(MD)No.8547 and 8548 of 2017

M/s.Jayanthi Papers,
Represented by its Proprietor Shanmugapriyaa,
13, Panthadi 4th Street,
Madurai. ... Petitioner in both W.P.s

/Vs./

The Assistant Commissioner (CT),
Mahal Assessment Circle,
Madurai. ... Respondent in both W.P.s

COMMON PRAYER:- Writ Petitions - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records of the first respondent in TIN 33035143112/2013-2014 dated 13.04.2017 & CST 156944/2014-2015 dated 17.04.2017 and quash the same as illegal and unlawful.

For Petitioner : Mr.G.V.Vairam Santhosh (in both Wps)

For Respondent : Mr.A.Thiyagarajan
Government Advocate (in both WPs)

COMMON ORDER

The petitioner has approached this Court contending that no opportunity of personal hearing has been afforded to it prior to completion of impugned assessments dated 13.04.2017 (TNGST 2013-14) and 17.04.2017 (CST 2014-15).

2. The assessing officer had originally passed an order on 12.10.2015, that was challenged in W.A.[MD]Nos.999 to 1002 of 2016. By order dated 29.06.2016, this Court passed an order as follows:

> 'All these four writ appeals could be disposed of by this common judgment.
>
> 2.The grievance of the appellant/writ petitioner is that though he sought for time to

respond to the pre-assessment notice received in the matter, but however, because of his hospitalization, he could not avail such an opportunity effectively. Consequently, the Assessing Officer, has passed orders immediately on the expiry of the time granted for responding to the pre-assessment notice.

3.It is brought to our notice that the assessee was hospitalised between 30.09.2015 and 17.10.2015. Though this fact could have been brought to the notice of the Assessing Authority and seek for additional time but still the assessee has failed to bring the same to the notice of the Assessing Authority. In those circumstances, the Assessing Authority construed that the assessee has nothing more to offer in response to the pre-assessment notice dated 24.08.2015 and hence, finalised the assessment order and passed the same on 12.10.2015. Assailing the same, the writ petitions have been filed which were dismissed by the learned single Judge. Aggrieved by the same, the present writ appeals have been filed.

4.Heard the learned counsel for the appellant/writ petitioner and the learned Additional Government Pleader for Commercial Taxes.

5.We have found no infirmity in the view taken by the learned Single Judge as well as by the Assessing Authority who passed the order of assessment on 12.10.2015. But nonetheless, we feel that if the assessee has been prevented for reasons and factors beyond his control, in responding to the pre-assessment notice dated 24.08.2015 such a hardship encountered by the assessee is a mitigating factor which can be taken note of and into consideration.

6.In that view of the matter, we set aside the order passed by the Assessing Authority on 12.10.2015 and we grant time to the appellant/writ petitioner upto 14.07.2016 to make available his objections/material in support of any such objections, and upon submission of such material, the same may be taken into account and consideration and appropriate order of assessment be passed. If the assessee fails to make available his objections/material, by 14.07.2016, the order passed on 12.10.2015 stands revived automatically and it be given effect to without any further reference to this Court. It goes without saying that the objections/material which the assessee is required to submit before 14.07.2016 must be submitted in the office of the Assessing Authority and obtain an inward section endorsement and any delaying tactics adopted by the assessee in the form of sending the material on 14.07.2016 through registered post, speed post and courier service etc., will not enure to the benefit of the assessee.

7.The writ appeals are accordingly disposed of. No costs. Consequently, C.M.P(MD)Nos.6015 to 6017 of 2016 are closed.'

Prior thereto, the petitioner has admittedly received two pre-assessment notices dated 19.07.2016 and 19.12.2016, to which reply has been filed on 17.12.2017.

3. The short point agitated before me is that no opportunity of personal hearing has been granted prior to completion of the impugned assessments. Though other grounds on merits are also raised, they are not pursued before me. Records of assessment have been produced which establish the position that the petitioner has not been called upon for a personal hearing.

4. In the considered view of this Court, personal hearing should have been afforded by the assessing officer. Circulars issued by the Principal Commissioner and Commissioner, Commercial Taxes have consistently laid down guidelines to the effect that a personal hearing should be extended to the assessee prior to completion of assessments, whether the assessee seeks the same or not. Thus, I am constrained to set aside the impugned assessments. The petitioner will appear before the assessing authority on 14.08.2019 [Wednesday] along with written submissions, if any, as well as evidences in support of its stand. No further notice need be issued in this regard. After hearing the petitioner and considering objection filed, if any, orders of assessment de novo will be passed by the assessing officer on or before 11.09.2019.

5. It is made clear that if the petitioner does not appear on the aforesaid date, the assessing officer is at liberty to confirm and reiterate the present impugned orders of assessment dated 13.04.2017 and 17.04.2017 without further reference to the petitioner. W.P.(MD)No.11139 of 2017 is allowed.

6. W.P.(MD)No.11141 of 2017 relates to the period 2014-15. Though the assessee has not bothered to respond to revision notice dated 19.07.2016, in the light of the fact that the assessment for the previous year i.e, 2013-14 impugned in W.P.(MD)No.11139 of 2017 has been set aside and remanded to the file of the assessing officer, the impugned order in W.P.(MD)No.11441 of 2017 is also set aside to ensure that a uniform stand is taken for both the years in

question. Accordingly, Writ petition in W.P.(MD)No.11141 of 2017 is also allowed. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

The Assistant Commissioner (CT),
Mahal Assessment Circle,
Madurai.

+1 CC to M/s.SPL GP (SR-79989[F] dated 06/08/2019)

+1 CC to M/s.G.V..VAIRAM SANTHOSH, Advocate (SR-80017[F] dated 06/08/2019)

Common Order made in
W.P.(MD)No.11139 and 11141 of 2017
Dated: 05.08.2019

sm
JMN(10.09.2019) 4P : 4C