IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.10595 of 2013
& M.P.No.1 of 2013

M/s.South India Surgical Company Ltd.,
rep. By its Director Vivek Bajaj,
No.117/65, Wallajah Road, Anna Salai,
Chennai 600 002. .. Petitioner

Vs.

The Assistant Commissioner (CT),
Chintadripet Assessment Circle,
No.62, Cathedral Road,
Chennai 600 086. .. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in CST.34683/2009-10 dated 28.02.2013 and quash the same as illegal, contrary to provisions of the Act and against the principles of natural justice and fair play.

For Petitioner : Mr.T.Pramodkumar Chopda

For Respondent : Mr.V.Veluchamy
(Government Advocate)

ORDER

The assessment order passed by the respondent in proceedings dated 28.02.2013, for the Assessment Year 2009-10, is under challenge in the present Writ Petition. The petitioner-Company is a registered dealer and an assessee on the file of the respondent. The petitioner reported their sales turnover, stock transfer in the monthly returns under the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as, 'the TNVAT Act') and the Central Sales Tax Act, 1956.

2.The grievances of the writ petitioner is that the assessment order impugned was passed in violation of Section 22

(4) proviso clause of the TNVAT Act. The said provision contemplates 'opportunity of being heard'. However, the respondent has not provided any such opportunity of personal hearing to the writ petitioner and thus, the principles of natural justice has been violated.

3.The learned counsel for the petitioner, relied on the judgment of the Hon'ble Division Bench of this Court in the case of V.Selladurai Vs. Chief Commissioner of Income Tax (OSD), reported in [2008] 168 Taxman, 111 (Madras) and the relevant paragraph No.6 is extracted hereunder:

> “6.Though learned counsel appearing for the appellant raised several contentions before us, but only one is sufficient to allow the writ appeal. The main contention is that the order, which is impugned in the writ petition, has been passed in violation of the principles of natural justice. Section 263 of the Income-tax Act provides for personal hearing. As already noted, the notice was received by the son-in-law of the appellant, who contacted the appellant in Singapore, who in turn requested him to get one month's time for filing detailed objections. The son-in-law of the appellant sent a petition on 20.03.2006, requesting one months' time for filing objections. Thereafter, the objections came to be filed on 27.03.2006. According to the appellant, his son-in-law was literally forced to file objections on 27.03.2006, and thereafter the impugned order came to be passed by the first respondent. It is not disputed by learned standing counsel appearing for the revenue that no personal hearing was given to the appellant or to his representative. In fact, no date was fixed for hearing and the first respondent went on to pass orders without granting any opportunity of personal hearing to the appellant.”

4.Further, in the case of Esjyapee Impex (P) Ltd., Vs. Commercial Tax Officer, Sowcarpet I, reported in [2011] 42 VST 61 (Mad), this Court held that the personal hearing, as contemplated, is the mandatory requirement to be followed before passing an order of assessment.

5.The respondent is unable to establish that an opportunity of personal hearing was provided to the writ petitioner before passing the impugned assessment order. Therefore, this Court is inclined to remand the matter back to the respondent for fresh consideration and passing of the orders.

6.Accordingly, the impugned assessment order, passed by the respondent in proceedings in CST.34683/2009-10 dated 28.02.2013, is quashed and the matter is remanded back to the respondent for fresh consideration, by affording an opportunity of personal hearing to the writ petitioner. In this regard, the respondent is directed to communicate the date and time of personal hearing to the writ petitioner and the petitioner, without seeking any adjournment, shall appear before the authority competent and submit their objections, explanations, judgments relied on, documents, etc. On receipt of the objections, the respondent is directed to consider the materials available on record and the pleadings made during the personal hearing and thereafter, pass order on merits and in accordance with law, within a period of three months thereafter.

With this direction, the Writ Petition stands allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gsa

To

The Assistant Commissioner (CT),
Chintadripet Assessment Circle,
No.62, Cathedral Road,
Chennai 600 086.

+1cc to Mr.T.Pramodkumar Chopta, Advocate, S.R.No.32500
+1cc to the Government Pleader, S.R.No.32696

W.P.No.10595 of 2013

PCH(CO)
PM(28/07/2021)