BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.4079 of 2020 and W.M.P.(MD)No.3446 of 2020

Tvl.Raj Carbons,
Represented by its Partner S.Gnanaraj,
D.No.3/87-C, By pass Road, Tuticorin 628 008. :Petitioner

-Vs-

1.The State of Tamil Nadu,
Represented by its Secretary to Government
Department of Commercial Taxes,
Fort St.George, Chennai 600 009.

2.The Commissioner of State Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

3.The Assistant Commissioner (ST)(FAC)-III,
282 A, Beach Road, Tuticorin 828 001.

4.The State Tax Officer,
Office of the Assistant Commissioner State Taxes-III,
282 A Beach Road, Tuticorin 828 001. :Respondents

**PRAYER**:Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the fourth respondent in TIN 33785922628/2013-14, dated 19.03.2018 (received by the petitioner on 22.01.2020) and quash the same and to direct the fourth respondent to pass fresh orders by following the directions of the second respondent Lr.No.Vat Cell/A3/37188/2011, dated 30.11.2011 after affording opportunity to the petitioner.

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

**ORDER**

Heard the learned counsel on either side. The petitioner challenges the impugned order dated 19.03.2018 passed by the fourth respondent. I wanted to know as to why there was a gross delay in filing the writ petition.

2.The petitioner's counsel states that he was never served with the impugned order dated 19.03.2018 and that the copy of the same was obtained by him by invoking Right to Information Act. He also would state that no personal hearing was afforded to him before passing the impugned order.

3.The stand of the petitioner was strongly rebutted by the respondents. A detailed counter affidavit has also been filed.

4.When the matter was taken up for hearing on the last occasion, I called upon the assessing officer to file a typed set of papers enclosing proof of service of the pre revision notice, personal hearing notice and the impugned order dated 19.03.2020. Today, the typed set of papers has been filed by the learned Special Government Pleader.

5.It is seen that the pre-revision notice was issued on 30.04.2015 and an urgent hearing notice was issued on 27.10.2017. The impugned order is said to have been passed on 19.03.2018. It is seen from the materials enclosed in the typed set of papers that even the impugned order dated 19.03.2018, was affixed on the petitioner's premises. It was not sent through RPAD. Likewise, the pre-revision notice was also not sent through RPAD. It is said to have been served in person. Of-course, the petitioner's counsel would dispute the genuineness of the signature. Be that as it may, I wanted to know if personal hearing was granted. It cannot be disputed that personal hearing notice was never issued to the petitioner. In any event, no copy such personal hearing notice is enclosed in the typed set of papers. Though in the index, it has been typed as if personal hearing notice is dated 11.11.2017, the contents of the typed set are not in consonance with the index.

6.I am satisfied that the impugned order has been passed without affording personal hearing to the petitioner herein.

7.The Hon'ble Division Bench of Madras High Court in the decision reported in [2019] 60 GSTR 418(Mad) (G.V.Cotton Mills (P) Ltd., V. The Assistant Commissioner(CT), Avarayampalayam Assessment Circle, Coimbatore) held as follows:-

> "Denial of personal hearing:
>
> 10. The respondent denied the appellant opportunity of hearing only on the ground that objection was not given to the pre-assessment notices. Even if objection was not given, still the assessing authority was expected to post the matter for hearing by issuing notice to the assessee. In case the assessee fail to appear, it is open to the assessment authority to pass orders on merits. 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.
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> 11. The Supreme Court in Swami Devi Dayal Hospital and Dental College v. Union of India MANU/SC/0873/2013 : [2013] 10 Scale 608 observed that even in the absence of a specific provision of giving hearing, the hearing is required in such cases, unless specifically excluded by a statutory provision."

8.The aforesaid ratio clearly applies to the case on hand. On this sole ground, the order impugned in the writ petition is quashed. The writ petition is allowed. The matter is remitted to the file of the fourth respondent to pass orders afresh in accordance with law. It is stated that the petitioner had already remitted 50% of the disputed tax. The said remittance will abide by the order to be passed by the fourth respondent after this remand. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

ASSISTANT REGISTRAR

/TRUE COPY/

/ /2021

SUB ASSISTANT REGISTRAR(CS)

Note:In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Department of Commercial Taxes, Fort St.George, Chennai 600 009.

2.The Commissioner of State Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

3.The Assistant Commissioner (ST)(FAC)-III,
282 A, Beach Road, Tuticorin 828 001.

4.The State Tax Officer,
Office of the Assistant Commissioner State Taxes-III,
282 A Beach Road, Tuticorin 828 001.

+1 CC to M/s.K.VADIVELU, Advocate (SR-14306[F] dated 30/03/2021)

rmi (PA) KUN (CO)
SMN/12.05.2021/3P/6C.

W.P.(MD)No.4079 of 2020 and
W.M.P.(MD)No.3446 of 2020
29.03.2021.