BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.3959 & 3961 of 2020
and
WMP(MD)Nos.3358 & 3360 of 2020

M/s.A.R.A.S.P.V.P.V Automobiles Pvt Ltd.,
Rep.by its Director C.Jawahar ... Petitioner in both cases

Vs.

The Assistant Commissioner of State Tax (FAC),
O/o.the Joint Commissioner of State Tax,
Palayamkottai Range,
4th Floor, PAPJM Building Annex,
Tirunelveli -627 002. ... Respondent in both cases

Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the impugned order of re-assessment in TIN No.33535567600/2014-15 & TIN No.33535567600/2015-16 dated 29.01.2020 passed by the respondent herein, quash the same.

For Petitioner in both cases	: Ms.Aparna Nandakumar
For Respondent in both cases	: Mrs.J.Padmavathi Devi, Special Government Pleader

COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader appearing for the respondent.

2.The petitioner is an assessee registered with the respondent. The cases on hand pertain to the assessment years 2014-15 and 2015-16. The petitioner's accounts were selected for VAT audit and on that basis, the impugned proceedings were initiated. The petitioner was issued with pre-revision notices and the petitioner offered their reply in response to the proposal set out therein. Thereafter, the impugned orders came to be passed levying tax and penalty on the petitioner. Questioning the same, these writ petitions have been filed.

3.The respondent has filed counter affidavit in both the writ petitions. The learned Special Government Pleader took me through the contents set out therein and it is pointed out that the writ petitions are not maintainable as appeal remedy is very much available for the petitioner.

4.I have carefully considered the rival contentions and went through the materials on record. As rightly pointed out by the learned counsel for the petitioner, the question of affording personal hearing will arise only after the reply is submitted by the petitioner. In the case on hand, the petitioner had given their reply on 08.11.2019 and 21.11.2019. Thereafter, admittedly, no personal hearing was granted. Even in the reference column in the impugned orders, the summon dated 01.11.2019 is said to be the personal hearing notice. When the reply is submitted on 08.11.2019 and 21.11.2019, it is not open to the respondent to fall back on the notice dated 01.11.2019. I am thus satisfied that the impugned orders were passed without giving personal hearing to the petitioner.

5.There is another ground on which the impugned orders will have to be set aside. Admittedly, the impugned orders rest on the purchase details culled out by the respondent from the web report. When the case of the department rests on such a mismatch, certainly, the procedure laid down in ***JKM Graphics Solutions Private Limited Vs. Commercial Tax Officer, Vepery Assessment Circle, Chennai,*** reported in ***[2017] 99 VST 343 (Mad)*** ought to have been followed. In this case, no enquiry with the other end dealer was conducted. Therefore, on this ground also the impugned orders will have to be set aside. They are accordingly set aside. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law.

6.The writ petitions stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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

The Assistant Commissioner of State Tax (FAC),
O/o.the Joint Commissioner of State Tax,
Palayamkottai Range,
4th Floor, PAPJM Building Annex,
Tirunelveli -627 002.

+3 CC to M/s.APARNA NANDAKUMAR, Advocate (SR-13220[F] dated 24/03/2021)

W.P.(MD)Nos.3959 & 3961 of 2020
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22.03.2021

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