BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**26.04.2021**

CORAM

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)Nos.8522, 8524, 8525, 8526 and 8529 of 2021

and

W.M.P(MD)Nos.6402, 6404, 6406, 6408 and 6411 of 2021

M/s.Sathyabala Auto Power Bikes (P) Ltd.,
Rep. by its Authorized Signatory,
K.Indirani ... Petitioner in all the petitions

Vs.

The Assistant Commissioner (S.T),
Rajapalayam 2 Assessment Circle,
141, at First Floor,
T.P.Mills Road,
Rajapalayam. ... Respondent in all the Petitions

COMMON PRAYER: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, to call for the records of the respondent in TNGST No.6062403/2000-2001, in TNGST No.6062403/2001-2002, TNGST No.6062403/2002-2003, in TNGST No.6062403/2003-2004 and in TNGST No.6062403/2004-2005 and keep the proceedings dated 01.03.2021 issued therein in abeyance until he comply with direction.

(In all W.Ps)
For Petitioner : Mr.D.Srinivasaragavan
For Respondent : Mr.S.Dhayalan,
Government Advocate

COMMON ORDER

These Writ Petitions are filed by the petitioner challenging the proceedings of the respondent in TNGST No.6062403/2000-2001, in TNGST No.6062403/2001-2002, TNGST No.6062403/2002-2003, in TNGST No.6062403/2003-2004 and in TNGST No.6062403/2004-2005 respectively, dated 01.03.2021 and keep the proceedings in abeyance until he complies with the direction of this Court

2. The petitioner is an authorized dealer in automobile and carrying on business of selling two wheelers and is registered under the respondent under the TNGST and CST Act. According to the petitioner, he is very regular in filing returns and payment of tax. While so, the place of business of the petitioner was inspected by the enforcement wing on 20.07.2004 and on that basis, notices were issued for the assessment years 2000-2001 to 2004-2005 on 14.09.2005 stating that the petitioner had not

paid/adjusted the entry tax. At that point of time, the validity of entry tax was challenged by various persons including the petitioner in W.P(MD)Nos.16466 to 16471 of 2005 and according to him, the said writ petitions are pending even today.

3. According to the petitioner, at various stages, the petitioner has also filed writ petitions before this Court stating that the respondent has not furnished documents. However, the assessment orders came to be passed on 30.11.2010 and that were challenged in W.P(MD)Nos.2351 to 2355 of 2011. According to the petitioner, the respondent did not give opportunity of personal hearing for filing objections and finally, those writ petitions were allowed by this Court by an order dated 25.01.2021 and the relevant portion of the said order is extracted hereunder:

> "*3. The primary contention urged by the learned counsel appearing for the petitioner is that no personal hearing was afforded to the petitioner before passing the impugned orders. The petitioner alleges that the respondent failed to provide the opportunity to the petitioner before passing the impugned order.*
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> *4. I called upon the learned Government Advocate to produce the copy of the personal hearing notice issued by the respondent. Though in the impugned orders several notices are referred to, they were issued calling upon the petitioner to furnish their objections. It is beyond dispute that the personal hearing was not afforded to the petitioner. Therefore, on this sole ground, the orders impugned in these writ petitions are quashed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The respondent will issue one more personal hearing notice and after hearing the petitioner, dispose of the matter.'*

4. The learned counsel for the petitioner would state that it is very clear that this Court directed the respondent to afford opportunity of personal hearing and then to pass orders. Various writ petitions have been filed by the petitioner from the year 2002 onwards and finally, he filed the aforesaid writ petitions in W.P(MD)Nos.2351 to 2355 of 2011 and the same were allowed by this Court vide order dated 25.01.2021, where personal hearing was directed to be given to the petitioner. In compliance of the orders passed by this Court, personal hearing notices dated 01.03.2021 were issued to the petitioner and according to the

petitioner, the date of personal hearing was fixed on 22.03.2021. The grievance of the petitioner is that though personal hearing notices were dated 01.03.2021, it were served on the petitioner only on 11.03.2021 and thereafter, few days only left for him to attend the personal hearing and therefore, he would state that personal hearing notices were issued to the petitioner without giving proper time to attend the hearing with available records and moreover, for all the five assessment years, personal hearing date was fixed on the same day.

5. Per contra, the learned counsel for the respondent would state that the matter is pending from the year 2001 onwards and the petitioner had been evading in some way or other, to pay the tax and in compliance of the orders passed by this Court dated 25.01.2021 in W.P(MD)Nos.2351 to 2355 of 2011, the present impugned notices have been issued to the petitioner. However, once again, the petitioner has come forward to challenge the same by way of these writ petitions.

6. Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondent and perused the materials available on record.

7. Perusal of the records shows that while passing the order dated 25.01.2021, the learned Judge without making any observations on the merits of the case, directed the respondent to issue notice of personal hearing and after hearing objections of the petitioner, to pass orders afresh, in accordance with law and accordingly, the respondent has also issued notices of personal hearing to the petitioner and the said notices have reached the petitioner as early as on 11.03.2021 and there were more than ten days available for the petitioner to go before the authorities for producing the documents available with him and to attend the personal hearing and make the objections and explanations. However, without utilizing the same, the petitioner has come forward with the present writ petitions stating that since the personal hearing was given on a single day for all the five assessment years, no proper time has been granted for attending the personal hearing with available records.

8. It is unfortunate that this matter has been prolonged from the year 2001 onwards and various writ petitions have been filed before this Court and from the year 2001, the petitioner had been litigating the notices and assessment orders and therefore, there was enough time for him to be ready with the case.

9. Furthermore, it is for the respondent to decide how many matters has to be heard on a particular day. For the five cases, though the petitioner has been given opportunity by different

notices to appear on the same date for personal hearing, the petitioner has come forward with the present writ petitions stating that amble time has not been given for him to appear before the authority.

10. It is to be noted at this juncture that the order passed by this Court in the earlier writ petitions in W.P(MD)Nos.2351 to 2355 of 2011 has become final as it was not appealed by the petitioner and therefore, now he cannot come and say that no opportunity was given to him for filing objections before fixing a date for personal hearing and that was not the orders of this Court and this Court has specifically directed the authorities to afford personal hearing and then to pass orders. Therefore, I do not find any infirmity in the notices issued by the respondent.

11. Further, the petitioner has filed the writ petitions on the 20th day of April, 2021, which is two days before the date of personal hearing and had missed the opportunity of personal hearing and therefore, filing of these writ petitions, in my considered opinion is only an abuse of process of this Court.

12. However, though this Court is not inclined to accept the contention of the petitioner and finds that only because of the attitude of the petitioner, he lost the opportunity of appearing before the authority for personal hearing, taking into consideration the present pandemic times and taking into consideration that the writ petitions have been filed before the date of personal hearing, the respondent shall fix the date of personal hearing on 12.05.2021 for all the assessment years and the petitioner shall appear before the authorities for personal hearing on 12.05.2021 and then pass orders afresh. If the petitioner fails to avail this opportunity, the respondent is at liberty to pass orders on merits and in accordance with law.

With the above observations, the Writ Petitions are disposed of. No Costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

pm

Note:(i) 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 (S.T),
Rajapalayam 2 Assessment Circle,
141, at First Floor,
T.P.Mills Road,
Rajapalayam.

+5 CC to M/s.B.RAVEENDHRAN, Advocate (SR-17473[F] dated 26/04/2021)

W.P(MD)No.8522 of 2021 (batch)
26.04.2021

sr(CO)
TR(03.05.2021) 5P 7C