BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 30.07.2021
CORAM :
THE HONOURABLE MRS.JUSTICE J. NISHA BANU
W.P.(MD).Nos.9639, 9640 & 9642 of 2021
and
W.M.P.(MD).Nos.7383, 7385 & 7387 of 2021

Tvl.Paramjothi Traders,
Represented by its Proprietor,
B.Deivendran,
S/o. Balakrishnan,
No.16/1, Asaithambi Lane, Thirumalpuram,
Bodinayakkanur,
Theni District - 625 513. ... Petitioner in all petitions

- Vs -

1.The Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chapauk,
Chennai - 600 005.

2.The State Tax Officer,
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nagar,
Bodinayakanur,
Theni District - 625 513. ... Respondents in all petitions

Common Prayer: This Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned proceedings of the 2nd respondent in TIN.33625081823/2014-15, 33625081823/2013-14 & 33625081823/2012-13 dated 16.11.2020 and quash the same and consequently, direct the 2nd respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

For Petitioner (In all W.Ps)	:	Mr.R.Veeramanikandan
For Respondents (In all W.Ps)	:	Mr.P.Thilak Kumar Government Advocate

COMMON ORDER

The Writ Petitions have been filed praying for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the Impugned proceedings of the 2nd respondent in TIN.33625081823/2014-15, 33625081823/2013-14 and 33625081823/2012-

13, dated 16.11.2020 and quash the same and consequently, direct the 2nd respondent to re-do the assessment after providing the copies of the documents relied upon and by giving due opportunity to file objection and for personal hearing.

2.The grievance of the petitioner is that the 2nd respondent, pursuant to the letter of the 1st respondent and the alleged proceedings of the Accountant General Audit Party, has issued a Notice, alleging that the petitioner has suppressed purchases of Cardamom. Since the petitioner has reported their entire purchases and not suppressed any purchase, as alleged, requested the 2nd respondent to provide the copies of the alleged report, data and invoice copies relied on in the notice. But the 2nd respondent has passed the impugned order without considering the reply filed by the petitioner and without providing the copies of the documents and by simply implementing the proposal, based on report of the Accountant General, without verifying the books of accounts of the petitioner.

3.The learned counsel appearing for the petitioner would submit that the impugned proceedings of the 2nd respondent is amounts to gross violation of natural justice and liable to be set aside. The impugned proceeding is passed without providing the copies of the documents relied upon for the assessment in spite of the request of the assessee. The 2nd respondent ought to have considered the fact that no assessment can be passed on mere assumption and presumption without any supportive documentary evidences and without conducting any enquiry. Hence, the learned counsel for the petitioner prays for setting aside the impugned proceedings of the 2nd respondent, dated 16.11.2020.

4.The learned Government Advocate appearing for the respondents would submit that the purchase details of the petitioner were compared with the monthly return filed by the petitioner in the Bodi Assessment Circle. While doing so, the Accountant General has found some difference in the purchase turnover. According to the A.G Report, the dealer has reported less turnover than the original turnover. The dealer has suppressed the purchase turnover and therefore, the petitioner has to pay the tax for the difference of turnover along with penalty at 150%. Based on the A.G.Report, the State Tax Officer, issued notice to the dealer on 09.08.2019. In turn, the petitioner has replied vide letter dated 20.08.2019 stating that they have reported all the purchases in the monthly returns. Further, the petitioner requested to provide the bill copies, details of movement of goods delivery and proof of payments in which the suppression is arrived.

5.It is the specific contention of the learned Government Advocate that as per the request of the petitioner, the State Tax Officer issued notice to the petitioner to appear before him for personal hearing. Since the petitioner did not appear for personal hearing, the State Tax Officer finalized the assessment. Hence, the learned Government Advocate prays for dismissal of the Writ Petition.

6.I have heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record, including the letter sent by the State Tax Officer, Bodinayakanur to the Government Pleader.

7.The primary contention of the petitioner is that while passing the impugned order, the 2nd respondent has not provided an opportunity of personal hearing. Though the respondents contended that the petitioner has been afforded an opportunity of personal hearing, there is nothing on record to substantiate the same. The refusal to afford an opportunity of personal hearing results in denial of valuable rights of the petitioner. Considering the entire facts and circumstances of the case, this Court is of the considered opinion that the petitioner has not been afforded an opportunity of personal hearing. In such view of the matter, this Court is inclined to set aside the impugned proceedings of the 2nd respondent, dated 16.11.2020.

8.Accordingly, the impugned proceedings of the 2nd respondent in TIN.33625081823/2014-15, 33625081823/2013-14 & 33625081823/2012-13 dated 16.11.2020 are hereby quashed and the matter is remanded back to the Authority for considering the same afresh. The 2nd respondent is directed to re-do the assessment, after providing the copies of the documents relied upon and by giving due opportunity to the petitioner to file objection and for personal hearing.

9.With the above directions, the Writ Petitions are ordered. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// 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 Commissioner of Commercial Taxes,
O/o. The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chapauk,
Chennai - 600 005.

2.The State Tax Officer,
Bodinayakanur Assessment Circle,
Commercial Tax Office,
No.17, Subburaj Nagar,
Bodinayakanur,
Theni District - 625 513.

+1 CC to M/s.Special Government Pleader (SR-24909[F] dated 02/08/2021)

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30.07.2021

RS (17.08.2021) 4P 4C