BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.14683 to 14686 of 2019 and
W.M.P.(MD)Nos.11120 to 11123 of 2019

Tvl.SSP Enterprises,
Rep. by its Proprietor,
S.Shanmugapriya,
W/o.D.Sridhar,
84/135, Erikaraithottam 1st Street,
K.K.Nagar, Madurai. ... Petitioner in all petitions

Vs.

1. The Appellate Deputy Commissioner (State Tax),
Commercial Taxes Buildings,
Madurai (North), Dr.Thangaraj Salai,
Madurai 625 020.

2. The Assistant Commissioner(CT),
(Now Re-designated as Assistant Commissioner (State Tax),
Commercial Taxes Buildings,
Tallakulam Assessment Circle,
Dr.Thangaraj Salai, Madurai – 625 020. ... Respondents in all petitions

Prayer in W.P.(MD)NO.14683 of 2019 : Writ petition is 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 passed by the second respondent in TIN No.33524883998/2011-12 dated 21.03.2018 and quash the same as illegal and passed by grossly violating the principles of natural justice and to redo the assessment after providing the petitioner an opportunity of personal hearing.

Prayer in W.P.(MD)NO.14684 of 2019 : Writ petition is 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 passed by the second respondent in TIN No.33524883998/2012-13 dated 21.03.2018 and quash the same as illegal and passed by grossly violating the principles of natural justice and to redo the assessment after providing the petitioner an opportunity of personal hearing.

Prayer in W.P.(MD)NO.14685 of 2019 : Writ petition is 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 passed by the second respondent in TIN No.33524883998/2013-14 dated 21.03.2018 and quash the same as illegal and passed by grossly violating the principles of natural justice and to redo the assessment after providing the petitioner an opportunity of personal hearing.

Prayer in W.P.(MD)NO.14686 of 2019 : Writ petition is 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 passed by the second respondent in TIN No.33524883998/2014-15 dated 21.03.2018 and quash the same as illegal and passed by grossly violating the principles of natural justice and to redo the assessment after providing the petitioner an opportunity of personal hearing.

(In all W.Ps.)

For Petitioner : Mr.A.Satheesh Murugan,
for Mr.K.Srinivasan.

For Respondents : Mr.S.Dayalan,
Government Advocate.

C O M M O N O R D E R

Heard the learned counsel on either side.

2. The orders impugned in the writ petitions are liable to be quashed on a single ground.

3. The second respondent issued pre-revision notices dated 25.05.2017. It appears that the petitioner did not respond to the same. Since the objection was not received from the petitioner, the assessment authority proceeded to confirm the proposals set out in the pre-revision notices and passed the orders impugned in these writ petitions.

4. Though the learned Government Advocate would call upon this Court to confirm the orders impugned in the writ petitions, as rightly pointed out by the learned counsel appearing for the petitioner, failure to give an opportunity of hearing vitiates the impugned orders. The issue is no longer *res integra*. 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.

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."

5. The aforesaid ratio clearly applies to the case on hand. In this view of the matter, the orders impugned in these writ petitions are quashed. These writ petitions are allowed. The matter is remitted to the file of the second respondent. The petitioner is given three weeks time from the date of receipt of a copy of this order to offer his explanation/objection. Thereafter, the second respondent will issue a personal hearing notice and pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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 Appellate Deputy Commissioner (State Tax),
   Commercial Taxes Buildings,
   Madurai (North), Dr.Thangaraj Salai,
   Madurai 625 020.

2. The Assistant Commissioner(CT),
   (Now Re-designated as Assistant
   Commissioner (State Tax),
   Commercial Taxes Buildings,
   Tallakulam Assessment Circle,
   Dr.Thangaraj Salai, Madurai – 625 020.

+1 CC to Mr.K.SRINIVASAN, Advocate (SR-5800[F] dated 17/02/2021)

W.P.(MD)Nos.14683 to 14686 of 2019
17.02.2021

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