BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 07.04.2021
CORAM
THE HONOURABLE MRS.JUSTICE J.NISHA BANU
W.P.(MD)Nos.15463,15471 & 15477 of 2020
WMP(MD) Nos.12980,12984,12989,12990,12994 &12995 of 2020

M/s. Fancy Agency,
Rep by its Proprietor M.Mohamed Ayub,
No.467, Main Bazaar,
Virudhunagar. Petitioner in all WPs

Vs.

1.The Appellate Deputy Commissioner(ST), (FAC),
Commercial Taxes Buildings,
Virudhunagar.

2.The Commercial Tax officer-1,
Virudhunagar-1 assessment Circle,
Virudhunagar. Respondents in all WPs

COMMON PRAYER: Writ petitions filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records of the second respondent in TIN No.33265720669/2015-16 dated 04.08.2016, TIN No.33265720669/2013-14 dated 12.08.2016 and TIN No.33265720669/2014-15 dated 12.08.2016 and quash the same without conducting any enquiry with the other end dealers and also not providing an opportunity of personal hearing and thus the order was passed by grossly violating the principles of natural justice and further direct the second respondent to redo the assessment after providing an opportunity of personal hearing.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mrs.J.Padmavathi Devi
Special Government Pleader
(In all Writ Petitions)

COMMON ORDER

These Writ Petitions have been filed challenging the impugned orders of the second respondent in TIN No.33265720669/2015-16 dated 04.08.2016, TIN No.33265720669/2013-14 dated 12.08.2016 and TIN No.33265720669/2014-15 dated 12.08.2016 and to direct the second respondent to redo the assessment after providing an opportunity of personal hearing to the petitioner.

2. According to the petitioner, he is a dealer in municipal contractor and an assessee on the file of the second respondent. For the assessment years 2013-14 to 2015-16, the petitioner had filed the returns in time and the second respondent has assessed under self assessment scheme, as per Section 22(2) of the Act. Subsequently, the second respondent had comparison of the purchase details taken from other end dealers Annexure - II, with the purchase details given by the petitioner in Annexure - I and noticed some difference and the same was treated as sales suppression, as a result of which, the second respondent proposed to levy penalty under Section 22(5) of the TNVAT Act.

3.The learned counsel for the petitioner would submit that the Second respondent had issued notice to the petitioner, without conducting any enquiry and verification of records as contemplated under Section 22(4) of the TNVAT Act and without affording any opportunity for personal hearing , which is gross violation of principles of natural justice. He would further submit that the second respondent has levied penalty of Rs.2,00,165/-, Rs.3,98,335/- and Rs.1,96,809/- on the petitioner, without finding any wilful non-disclosure of turnover liable to be assessed under Section 22(4) of the Act.

4.The learned counsel for the petitioner filed an additional affidavit, wherein, he would draw the attention of this Court that as per Section 3(1) (b) of the TNVAT Act, the turnover of the petitioner determined by the second respondent has not crossed threshold limit, ie ten lakhs, since there is no liability of tax under section 3(1) (b) of the TNVAT Act. Hence, he would pray to quash the impugned orders and to direct the second respondent to redo the assessment after providing an opportunity of personal hearing.

5.The learned Special Government Pleader appearing for the respondents would submit that even after receipt of notice issued by the second respondent, the petitioner had not come forward to file any objections. She would further submit that the petitioner has an alternative remedy to file statutory appeal under Section 51 of the TNVAT Act 2006, within the time prescribed under the TNVAT Act 2006. She would reiterate that Section 51 of the TNVAT Act 2006 provides appeal remedy to the petitioner before the jurisdictional Appellate Deputy Commissioner and hence, the Writ Petition is liable to be dismissed.

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

7. I have considered the submissions made by the learned counsel on either side and perused the documents.

8.It is the contention of the petitioner that without affording an opportunity of personal hearing, the second respondent has passed the impugned orders, in gross violation of principles of natural justice. It is the further contention of the petitioner that as per Section 3(1) (b) of the TNVAT Act, the turnover determined by the second respondent has not crossed threshold limit. Though it is contended by the learned Special Government Pleader that even after receipt of notice, the petitioner had not come forward to file any objections, it is mandatory on the part of the respondent to give an opportunity of personal hearing, by specifying the dates of such personal hearing, whether it is asked or not by the petitioner. But, in the impugned order, there is no whisper as to the same. Also, the counter affidavit is silent in respect of Section 3(1) (b) of the TNVAT Act, which stipulates threshold limit of the turnover.

9.In this context, a Division Bench of this Court in an unreported decision in ***W.A(MD) No.234 to 240 of 2015 (G.V.Cotton Mills (P) Ltd, rep by its Managing Director Vs. The Assistant Commissioner (CT), Avarampalayam Assessment Circle, Corporation of Shopping Complex, Coimbatore, dated 16.03.2018,*** has held that failure to submit objection to the pre-assessment notice would not give a right to the Assessing Officer to deny opportunity of personal hearing and the relevant portion reads thus:-

> *"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."*

10.On the sole ground of not affording personal hearing, this Court is of the view that the matter should be remanded for fresh consideration. Accordingly, the impugned orders in TIN No.33265720669/2015-16 dated 04.08.2016, TIN No.33265720669/2013-14 dated 12.08.2016 and TIN No.33265720669/2014-15 dated 12.08.2016, are set aside and the matters are remanded back to the respondent for fresh consideration. The petitioner is hereby directed to make his reply cum objection, if any, within a period of two weeks from the date of receipt of a copy of this order. Thereafter, the respondent shall fix a specific date for hearing and communicate the same to the petitioner, in advance. On the said date, the petitioner shall appear before the respondent with all relevant records and put forth his contentions and after hearing the petitioner, the respondent, by considering the reply and objections, shall pass appropriate reasoned order, within a further period of four weeks thereafter. Needless to say that if the petitioner does not co-operate in the enquiry or does not avail personal hearing, the respondent shall record the same and pass orders in accordance with law.

11.These Writ Petitions are allowed, on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

vrn

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(ST), (FAC),
Commercial Taxes Buildings,Virudhunagar.

2.The Commercial Tax officer-1,
Virudhunagar-1 assessment Circle, Virudhunagar.

+1 CC to M/s.K.SRINIVASAN, Advocate SR-15541[F] dated 08/04/2021
+1 CC to M/s.SPL GP SR-15605[F] dated 09/04/2021

Order made in
W.P.(MD)Nos.15463,15471 & 15477 of 2020
WMP(MD) Nos.12980,12984,12989,12990,12994 &12995 of 2020
08.04.2021

KUN(CO)
TR(05.05.2021) 4P 5C