BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.16300, 16304 & 15887 of 2019
and
M.P.(MD)Nos.12956, 12958 & 12612 of 2019

Tvl.Palaniyappa Stores,
Represented by its Proprietor,
A.Kannammai, aged about 69 years,
W/o.L.Alagappan,
No.73, Main Road, Batlagundu,
Dindigul District-624 202. ... Petitioner in all W.Ps.

Vs

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

2.The Commercial Tax Officer,
Commercial Taxes Office,
No.1-4-36, B7/1, Periyar Colony,
Madurai Road, Nilakottai,
Dindigul District-624 208. ... Respondents in all W.Ps.

Prayer in W.P.(MD)No.16300 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33555300451/2013-14, dated 23.05.2019 and quash the same.

Prayer in W.P.(MD)No.16304 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33555300451/2014-15, dated 23.05.2019 and quash the same.

Prayer in W.P.(MD)No.15887 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the records pertaining to the impugned proceedings of the second respondent in TIN:33555300451/2012-13, dated 23.05.2019 and quash the same.

For Petitioner : Mr.B.Rooban
For Respondents : Mrs.J.Padmavathy Devi
(in all W.Ps) Special Government Pleader

COMMON ORDER

Heard the learned counsel on either side.

2.Though the petitions are three in number, the petitioner is one and the same. The assessment years pertain to 2012-13, 2013-14 and 2014-15. The petitioner was under compounding scheme. The second respondent noticed that there is no proper correspondence between the petitioner's purchase turnover and her sales turnover. From this, the assessing authority came to the conclusion that the petitioner had fudged the accounts. The stand of the petitioner was that due to her old age, she had closed down her business and had transferred all the stock to her son and daughter-in-law. She would make a further claim that all the transfer of stocks has been duly reflected in the profit and loss accounts of her son and daughter-in-law. It is further claimed that since the petitioner as well as her son and daughter-in-law are under compounding scheme, there is no need to disclose the purchase turnover. It is also well settled that the purchase turnover will not form a part of the sales turnover. This was the stand taken by the petitioner. Not satisfied with the same, the impugned orders came to be passed. They are under challenge in the writ petitions.

3.I do not want to go into the merits of the matter. There is no dispute that the assessing authority did not give the opportunity of personal hearing to the petitioner.

4.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.
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> 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.On this sole ground, the impugned orders are quashed. The matter is remitted to the file of the second respondent. The petitioner's counsel states that he would not insist of any formal personal hearing notice and that the petitioner would appear either by herself or her authorised representative before the second respondent on 08.03.2020 at 11.00 a.m., On the said date, the second respondent herein will hear the petitioner and thereafter, pass orders afresh in accordance with law.

6.The Writ Petitions are allowed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

RMI

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, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
Commercial Taxes Office,
No.1-4-36, B7/1, Periyar Colony,
Madurai Road, Nilakottai,
Dindigul District-624 208.

+1 CC to Mr.B.ROOBAN, Advocate (SR-6908[F] dated 24/02/2021)

+1 CC to THE SPECIAL GOVERNMENT PLEADER(SR-6919[F] dated 24/02/2021)

Order made in
W.P.(MD)Nos.16300,16304&15887/2019 and
M.P.(MD)Nos.12956,12958&12612/2019
23.02.2021

NS(CO)
SRS (09/03/2021) 3P : 5C