BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 17.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
WP(MD)Nos.16705 & 16706 of 2019
and
WMP(MD)Nos.13317 & 13318 of 2019

M/s.Bharathi Trade Links,
Rep.by its Proprietor
K.Yasir Arafath ...Petitioner in both cases

Vs.

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

2.The Assistant Commissioner (CT),
Karur (west) Assessment Circle,
Karur. ... Respondents in both cases

Prayer in WP(MD)No.16705 of 2019 : Writ petition is 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.33683786258/2014-2015 and quash the order dt.10.03.2017 as it is unlawful and contrary to the principles of natural justice and further direct the 2nd respondent to consider the objections dt.20.2.2017 along with records filed by the petitioner by affording an opportunity for personal hearing in all perspective on its merits and pass appropriate order in accordance with law.

Prayer in WP(MD)No.16706 of 2019 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the second respondent in TIN No.33683786258/2015-2016 and quash the order dt.05.01.2017 as it is unlawful and contrary to the principles of natural justice.

in both cases :

For Petitioner : Mr.A.Sathishmurugan for Mr.K.Srinivasan

For Respondents : Mr.S.Dayalan Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioners are two in number. But the petitioner in both is one and the same. The assessment years pertain to the years 2014-15 and 2015-16. The impugned orders are liable to be quashed for the simple reason that opportunity of personal hearing was not afforded before the passing the same. In the affidavit filed in support of the writ petitions, the petitioner had specifically pleaded that the second respondent has straightaway passed the impugned order under Section 27 of the Tamil Nadu Value Added Tax, 2006 without granting opportunity of personal hearing and thereby violated the principles of natural justice.

3.Even though such a ground has been taken in the affidavit filed in support of the writ petitions, the respondents have not controverted the stand taken by the petitioner. Though the learned Special Government Pleader called 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 opportunity of personal hearing vitiates the impugned orders.

4.The issue is no longer *res integra*. The Hon'ble Division Bench of the 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.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 two more weeks from the date of receipt of copy of this order to offer his explanation/objection along with supporting documents. If the second respondent is not satisfied with the same, it is open to him to proceed in accordance with law. In that event, the second respondent has to necessarily afford an opportunity of personal hearing and pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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),
Commercial Taxes Buildings, Trichy.

2.The Assistant Commissioner (CT),
Karur (west) Assessment Circle, Karur.

+2 CC to Mr.K.SRINIVASAN, Advocate (SR-5799[F] dated 17/02/2021)

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KM (08.03.2021) 3P 5C