BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 22.02.2021

CORAM

THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)Nos.19267, 19268 and 19270 of 2019
and
W.M.P.(MD)Nos.15680, 15681 and 15683 to 15686 of 2019

W.P.(MD)No.19267 of 2019:-

C.S.Joshy,
Proprietor,
Tvl.Grace Granite Palace,
Kanyakumari District. : Petitioner

Vs.

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District. : Respondent

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to call for the records on the file of the respondent in TIN.33776184776/2012-13 dated 28.03.2018 and quash the same and consequently, to direct the respondent grant the details of the mismatch web report and the order details and an opportunity to submit reply and a personal hearing and then pass orders according to law.

For Petitioner :Mr.M.Azeem
For Respondent :Mrs.J.Padmavathidevi
Special Government Pleader

W.P.(MD)No.19268 of 2019:-

C.S.Joshy,
Proprietor,
Tvl.Grace Granite Palace,
Kanyakumari District. : Petitioner

Vs.

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District. : Respondent

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to call for the records on the file of the respondent in TIN.33776184776/2013-14 dated 28.03.2018 and quash the same and consequently, to direct the respondent grant the details of the mismatch web report and the order details and an opportunity to submit reply and a personal hearing and then pass orders according to law.

For Petitioner :Mr.M.Azeem
For Respondent :Mrs.J.Padmavathidevi
Special Government Pleader

W.P.(MD)No.19270 of 2019:-
C.S.Joshy,
Proprietor,
Tvl.Grace Granite Palace,
Kanyakumari District. : Petitioner

Vs.

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District. : Respondent

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to call for the records on the file of the respondent in TIN.33776184776/2014-15 dated 28.03.2018 and quash the same and consequently, to direct the respondent grant the details of the mismatch web report and the order details and an opportunity to submit reply and a personal hearing and then pass orders according to law.

For Petitioner :Mr.M.Azeem
For Respondent :Mrs.J.Padmavathidevi
Special Government Pleader

COMMON ORDER

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

2.In all the Writ Petitions, common questions of law arise for consideration.

3.The writ petitioner is a dealer registered with the respondent. The petitioner's assessments were sought to be reopened. Due to medical grounds, the petitioner did not offer his objection. Thereafter, the impugned orders, dated 28.03.2018 came to be passed. They are under challenge in these Writ Petitions.

4.Though the respondent has filed a detailed counter affidavit and the learned Special Government Pleader wants this Court to sustain the impugned orders, I am of the view that they will have to be necessarily quashed for the following two reasons:

(1)the case of the respondent rests on the mismatch details that appear to have emerged from the departmental website. In that event, as held by this Court in ***M/s.JKM Graphics Solutions Private Limited, Chennai vs The Commercial Tax Officer, Vepery Assessment Circle, Chennai***, reported in ***2017 SCC Online Mad 669 : (2017) 99 VST 343*** (as reviewed), the enquiry with the other end dealer must have been conducted. That procedure was not followed. This failure to adhere to the law laid down in JKM Graphics case vitiates the impugned proceedings

(2)An opportunity of personal hearing was not given. 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.Therefore, though the petitioner did not file his explanation, still personal hearing ought to have been given. Since it was not given, the impugned orders are vitiated. On these twin grounds, the impugned orders are quashed and the matter is remitted to the file of the respondent to pass orders afresh orders in accordance with law.

6.These Writ Petitions are allowed accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

The State Tax Officer,
Kuzhithurai at Kattathurai,
Kanyakumari District.

+3 CC to MR.M.AZEEM, Advocate (SR-6599[F] dated 23/02/2021)

+1 cc to The Special Government Pleader Sr.No.6660

W.P.(MD)Nos.19267, 19268 and 19270 of 2019
22.02.2021

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