BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.7817 to 7820 of 2018 and
W.M.P.(MD)Nos.7392 to 7395 of 2018

Tvl.Arun Timber Depot,
Rep. by its Prop.C.Rajamoorthi,
No.28, Varadharajapuram,
Tuticorin. ... Petitioner in all petitions

Vs.

1. The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Commercial Taxes &
Registration Department,
Fort St. George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
2nd Floor, Ezhilagam, Chepauk, Chennai - 600 005.

3. The Assistant Commissioner(C.T.)-I,
Tuticorin. ... Respondents in all petitions

Prayer in W.P.(MD)No.7817 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the third respondent in TIN 33605821168/2011-2012 dated 15.11.2017 and quash the same and to direct the third respondent to afford an opportunity of being heard and pass fresh orders for the assessment year 2011-12.

Prayer in W.P.(MD)No.7818 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the third respondent in TIN 33605821168/2012-2013 dated 15.11.2017 and quash the same and to direct the third respondent to afford an opportunity of being heard and pass fresh orders for the assessment year 2012-13.

Prayer in W.P.(MD)No.7819 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the third respondent in TIN 33605821168/2013-2014 dated 15.11.2017 and quash the same and to direct the third respondent to afford an opportunity of being heard and pass fresh orders for the assessment year 2013-14.

Prayer in W.P.(MD)No.7820 of 2018 : Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for records relating to the order passed by the third respondent in TIN 33605821168/2015-2016 dated 21.08.2017 and quash the same and to direct the third respondent to afford an opportunity of being heard and pass fresh orders for the assessment year 2015-16.

(in All W.Ps.)
For Petitioner : Mr.M.MD.Ibrahim Ali
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

* * *

COMMON ORDER

Heard the learned counsel appearing for the petitioner and the learned Standing counsel appearing for the respondents.

2. The writ petitions are four in number. However, the petitioner in all the writ petitions are one and the same. The assessment years alone are different. The petitioner is a dealer registered with the third respondent. Following the inspection of the petitioner's business premises by the enforcement wing on 15.07.2016 and 16.07.2016, it was suggested to revise the petitioner's concluded assessment for the previous years. Pre-revision notices were sent by registered post with acknowledgement due to the petitioner's address. The petitioner's counsel would claim that the notices were received by the employee who was authorised to receive the official communications. It was also stated that the Proprietor was in hospital during the relevant time and that is why, they were unable to offer their objections. Since no reply was received, the proposals set out in the pre-revision notices were confirmed and the impugned orders were passed on 15.11.2017 and 21.08.2017. Only when the respondents came to enforce the same, the petitioner realised his precarious situation.

3. The petitioner's counsel fairly states that in respect of the demands set out in all the four writ petitions, the petitioner would pay a sum of Rs.10,00,000/- within a period of four weeks from the date of receipt of a copy of this order. This payment will be without prejudice to the petitioner's contentions and will abide by the orders to be passed after remand.

4. This undertaking to remit a sum of Rs.10,00,000/- is recorded.

5. The impugned orders suffer from a basic vice. It is not in dispute that personal hearing was not given to the petitioner. Though no reply was given by 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:
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> 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."

6. 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 third respondent. The petitioner is given four weeks time from the date of receipt of a copy of this order to offer his objections. The third respondent will go through the same. If the third respondent is not satisfied with the stand taken by the petitioner, then, the third respondent will issue personal hearing notice and pass orders afresh in accordance with law. If the petitioner does not adhere to the undertaking, the order now passed by this Court will stand automatically recalled. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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 Secretary to Government,
   Department of Commercial Taxes &
   Registration Department,
   Fort St. George, Chennai - 600 009.

2. The Commissioner of Commercial Taxes,
   2nd Floor, Ezhilagam,
   Chepauk, Chennai - 600 005.

3. The Assistant Commissioner(C.T.)-I,
   Tuticorin.

+4 CC to Mr.MOHAMED IBRAHIM ALI, Advocate (SR-7384[F] dated 25/02/2021)

W.P.(MD)Nos.7817 to 7820 of 2018
25.02.2021

PMU
AE/ (08/03/2021) 4P / 8C