BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.9227 & 9228 of 2018
and
W.M.P.(MD)Nos.8527 & 8528 of 2018

Tvl.Noble Natural Resources India (P) Ltd.,
Rep. by its Director, Gopal Lohiya,
S/o.Sri Ram Chandra Lohiya,
11A. First Floor, Harbour Estate,
World Trade Avenue,
Tuticorin – 628 004. ... Petitioner
(in both petitions)

Vs.

The Assistant Commissioner(ST),
Thoothukudi-III Circle,
Thoothukudi. ... Respondent
(in both petitions)

Prayer in W.P.(MD)No.9227 of 2018:

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the respondent in TIN No.33356314308/2015-16, dated 26.03.2018 and quash the same as the same is illegal and passed by grossly violating the principles of natural justice and to redo the assessment after considering their objections and also to provide an opportunity of personal hearing to the petitioner as per the guidelines given by the Hon'ble Division Bench of this Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd., Salem Vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another.

Prayer in W.P.(MD)No.9228 of 2018:

Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned proceedings passed by the respondent in TIN No.33356314308/2016-17, dated 26.03.2018 and quash the same as the same is illegal and passed by grossly violating the principles of natural justice and to redo the assessment after considering their objections and also to provide an opportunity of personal hearing to the petitioner as per the guidelines given by the Hon'ble Division Bench of this Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Ltd., Salem Vs. The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another.

(in both W.Ps.)
For Petitioner : Mr.A.Satheesh Murugan,
for Mr.K.Srinivasan.
For Respondent : Mrs.J.Padmavathi Devi,
Special Government Pleader.

* * *

COMMON ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Special Government Pleader appearing for the respondent.

2. The writ petitioner in both the writ petitions are one and the same. The assessments years alone are different. The cases on hand pertain to the assessment years 2015-16 and 2016-17. The petitioner is a dealer registered with the respondent. The writ petitioner filed returns under Section 22(2) of Tamil Nadu Value Added Tax Act and they were finalised on deemed assessment basis. Thereafter, action was taken under Section 27(1)(a) of Tamil Nadu Value Added Tax Act. To this effect pre-revision notice dated 09.02.2018 was issued on 06.03.2018. The notice is predicated on the inspection report submitted by the Enforcement Wing officials. The petitioner gave his letter dated 09.03.2018 and requested time till 25.03.2018. It is seen that on 22.03.2018, the petitioner gave an explanation and the same was sent through Blue Dart/DHL Courier. It is seen from the records that the same was also served on the respondent on 26.03.2018. But on 26.03.2018, the impugned orders came to be passed confirming the proposals set out in the pre-revision notices. The said impugned orders are under challenge in these writ petitions.

3. The respondent has filed a detailed counter affidavit and the learned Special Government Pleader took me through the averments set out therein. The learned Special Government Pleader submitted that the impugned orders do not warrant any interference and called for dismissal of these two writ petitions.

4. I carefully considered the rival contentions raised on both sides.

5. There is no dispute that the personal hearing was not afforded to the writ petitioner. It has been held time and again that after receiving the explanation from the assessee, the authorities are obliged to issue personal hearing notice. In the cases on hand, no such personal hearing notice was afforded. On this

sole ground, the orders impugned in these writ petitions are liable to be quashed. That apart, as rightly pointed out by the learned counsel appearing for the petitioner, he had asked for adjournment by sending the letter dated 09.03.2018. The same was admittedly received by the respondent. If the respondent was not inclined to grant adjournment, he should have passed an order rejecting the said request for adjournment. It appears that the respondent though did not pass any specific order in writing was inclined to consider the said request. Till 25.03.2018, no order was passed. On 26.03.2018 the impugned orders came to be passed. However, on 22.03.2018 itself the petitioner had sent his objection and the same had not been referred to or considered.

6. More than anything else, the respondent has gone squarely by the inspection report submitted by the Enforcement Wing officials. The business premises of the petitioner was inspected by the enforcement wing officials and they had discovered certain discrepancies. Based on their report, pre-revision notice was issued. The respondent as a quasi judicial authority ought to have considered the issue independently. But he appears to have entirely gone by the report of the enforcement wing. This is clearly impermissible in law. The learned counsel for the writ petitioner draws my attention to the order dated 02.03.2007 made in W.P.Nos.7784 and 7785 of 2007 *(M/s.Amutha Metals Vs. The Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai).* While allowing the said writ petition, a learned Judge of this Court held as follows:-

> *"If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts."*

7. Therefore, ratio laid down in the aforesaid decision is squarely applicable to the cases on hand. The orders impugned in these writ petitions are quashed. These writ petitions are allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. The explanation given by the petitioner is placed on record. The respondent may or may not agree with the same. If the respondent is not satisfied with the stand taken by the petitioner, she will grant personal hearing to the petitioner and thereafter, pass orders afresh. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (T&P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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

The Assistant Commissioner(ST),
Thoothukudi-III Circle,
Thoothukudi.

+1 CC to Mr.K.SRINIVASAN, Advocate (SR-5801[F] dated 17/02/2021)

Order made in
W.P.(MD)Nos.9227 & 9228 of 2018 and
W.M.P.(MD)Nos.8527 & 8528 of 2018
17.02.2021

KUN(CO)
SRS (08/03/2021) 4P : 3C