BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 18.02.2021
CORAM:
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.19964 and 19965 of 2014
and
M.P.(MD)Nos.1,1 & 1 of 2014

M/s.J.S.Steels,
Rep. its Proprietor J.Sheik Syed Hussain,
Madhina Compound,
No.36, Gandhiji Road,
Dindigul. ... Petitioner in both W.Ps.

-Vs-

The Assistant Commissioner (CT)-III,
Commercial Taxes Buildings,
Dindigul. ... Respondent in both W.Ps.

Prayer in W.P.(MD)No.19964 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33035241955/2012-13, dated 08.10.2014 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass assessment order afresh after affording the reasonable opportunity of being heard.

Prayer in W.P.(MD)No.19965 of 2014: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the respondent in TIN No.33035241955/2013-14, dated 08.10.2014 and quash the same as illegal and contrary to the provisions of the Act and direct the respondent to pass assessment order afresh after affording the reasonable opportunity of being heard.

For Petitioner : Mr.S.K.Karunakar
For Respondent : Mr.S.Dayalan
Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.The petitioner in both the writ petitions is one and the same. The assessment years are 2012-13 and 2013-14. The petitioner is a dealer registered with the respondent. His assessment for both the years were finalised under Section 22(2) of the TNVAT Act, 2006, on deemed assessment basis on verification of the dealings retrieved from the departmental website. The respondent noticed certain discrepancies. Based on the same, pre-revision notices were issued. Due to medical reasons, the petitioner states that he could not submit his reply. The impugned orders came to be passed confirming the proposals set out in the show cause notice. They are under challenge in these writ petitions.

3.The respondents have filed a counter affidavits and the learned Government Advocate took me through the contentions set out therein and wanted me to sustain the orders impugned in these writ petitions.

4.I carefully considered the rival contentions and went through the materials on record. The impugned orders are liable to be quashed for two reasons:-

(i)When the impugned orders rest on the discrepancies noticed from the particulars retrieved from the departmental website, the respondent ought to have conducted an enquiry with the other dealer. Such procedure was not adopted.

(ii) Personal hearing was not granted.

5.Even if the assessee failed to respond the pre revision notices, the Hon'ble Division Bench, in G.V.Cotton Mills case, held that affording the opportunity of personal hearing is mandatory. 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.“

6.For the aforesaid reasons, the impugned orders are quashed. The Writ Petitions are allowed. The matters are remitted to the file of the respondent. The petitioner is given three weeks time from the date of receipt of a copy of this order to offer his explanation. If the respondent is not satisfied even thereafter, the respondent will afford the opportunity of personal hearing to the petitioner and thereafter pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 (CT)-III,
Commercial Taxes Buildings,
Dindigul.

+1 CC to Mr.S.KARUNAKAR, Advocate (SR-6061[F] dated 19/02/2021)

+1 CC to SPL GP (SR-6175[F] dated 19/02/2021)

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and
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18/02/2021

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