BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.02.2021
CORAM
**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**
W.P.(MD)Nos.13248 & 13249 of 2015 and
M.P.(MD)Nos.1 & 1 of 2015

Tvl.Omkar Textiles,
Rep. by its Proprietor Hitendra S.Kuriya,
S/o.Seventilal S.Kuriya,
C/8 10P(A), SIDCO Industrial Estate,
Kappalur,
Madurai District - 625 008. ... Petitioner in both petitions

Vs.

1. The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai - 600 005.

2. The Commercial Tax Officer,
Tirupparankundram Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai District - 625 020. ... Respondents in both petitions

**Prayer in W.P.(MD)No.13248 of 2015:** 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 of the second respondent in TIN:33276231999/2013-14 dated 15.06.2015 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

**Prayer in W.P.(MD)No.13249 of 2015:** 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 of the second respondent in TIN:33276231999/2010-11 dated 15.06.2015 and quash the same and to consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

(in both W.Ps.)
For Petitioner : Mr.B.Rooban

For Respondents : Ms.J.Padmavathi Devi,
Special Government pleader

* * *

**COMMON ORDER**

Heard the learned counsel on either side.

2.Though the writ petitions are two in number, the petitioner is one and the same. The assessment years alone are different. Though very many grounds have been urged, these writ petitions came to be disposed of on a short ground. The petitioner in Ground (vi), specifically pleaded that personal hearing was not afforded. This contention is not controverted. In the impugned order also, it is not seen that personal hearing was given.

3. 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."

4. 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 three weeks time from the date of receipt of a copy of this order to offer his explanation/objection. Thereafter, the second respondent will issue a personal hearing notice and pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

// 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.

**PMU**

**To:**

1. The Commissioner of Commercial Taxes,
   O/o.The Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai - 600 005.
2. The Commercial Tax Officer,
   Tirupparankundram Assessment Circle,
   Commercial Taxes Complex,
   Dr.Thangaraj Salai,
   Madurai District - 625 020.

+1 CC to M/s.SPL GP ( SR-8192[F] dated 02/03/2021 )

W.P.(MD)No.13248 of 2015
26.02.2021

GS (22.04.2021) 3P 4C