



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.13695 of 2018

and

W.M.P. (MD)No.12436 of 2018

Tvl.Cardamon Planters Association,
Rep.by its Vice President N.P.K.S.Syed Ibrahim,
No.258, Paramasivam Koil Street,
Bodinayakanur.

... Petitioner

-Vs-

The Assistant Commissioner (CT),
Bodinayakanur.

... Respondent

Prayer: 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:33365080024/2015-16, dated 25.07.2017 quash the same as illegal, invalid and violative of the principles of natural justice and direct the respondent to pass order afresh after furnishing the petitioner with the copies of the records relied on for the revision of assessment viz., the auction sales details, collected from spices board and after verifying the books of accounts of the petitioner and thereafter, affording the petitioner an opportunity to file detailed objections to the proposals in the show-cause notice dated 20.04.2017.

For Petitioner : Mr.A.Chandrasekaran
For Respondent : Mr.G.Arjunan
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The case on hand pertains to the assessment years 2015-16. The respondent had noticed certain discrepancies based on certain details collected by the Spices Board. Hence, notice dated 20.04.2017 was issued to the petitioner and served on 02.05.2017. The petitioner does not appear to have given any reply. Thereafter, the impugned order came to be passed confirming the proposals set out in the notice. It is obvious that no personal hearing was given to the petitioner.



3.The respondent has filed a detailed counter affidavit and the learned Government Advocate took me through the same.

4.Though the learned Government Advocate would call upon this Court to confirm the order impugned in the writ petition, as rightly pointed out by the learned counsel appearing for the petitioner, failure to give an opportunity of hearing vitiates the impugned orders. The issue is no longer *res integra*.

5.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.

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 order impugned in the writ petition is quashed. The writ petition is allowed. The matter is remitted to the file of the respondent. The respondent will issue a personal hearing notice and pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



rmi

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),
Bodinayakanur.

+1 CC to M/s.A.CHANDRASEKARAN, Advocate (SR-12452[F] dated
19/03/2021)

W.P. (MD)No.13695 of 2018

and

W.M.P. (MD)No.12436 of 2018

17.03.2021

sss (CO)

TR(21.04.2021) 3P 3C