



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6321 of 2017

and

W.M.P.(MD)No.4995 of 2017

WEB COPY

Sudha Store,
Represented by its Proprietor,
T.Muthuramalingam,
29/593 Cape Road,
Kottar, Nagercoil,
Kanyakumari District.

... Petitioner

-Vs-

The Commercial Tax Officer,
Nagercoil Town,
Mead Street,
Nagercoil 629 001.

... 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 33396101177/2014-2015 dated 31.01.2017 and quash the same as illegal, arbitrary, without jurisdiction and in violation of the principles of natural justice and consequently, direct the respondent to consider the representation of the petitioner dated 02.03.2017 and issue a fresh pre-assessment notice to the petitioner and after granting to the petitioner, an opportunity to submit reply and a personal hearing, pas orders according to law .

For Petitioner : Mr.M.Azeem
For Respondent : Mrs.J.Padmavathi Devi
Special Government Pleader

ORDER

Heard the learned counsel on either side.

2.The petitioner is a wholesale dealer in provisions. He was registered with the respondent. The case on hand pertains to the assessment year 2014-15. The petitioner's place of business was inspected by the Enforcement Wing Officials of the department on 19.02.2015. Based on their report, the impugned action has been taken. Questioning the final order passed, the writ petition has been filed.

3.The respondents has filed a counter affidavit and the learned Special Government Pleader took me through the averments set out

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therein. The respondent would also argue that the petitioner ought to avail the alternative remedy of appeal and not have rushed to this Court.

4.I carefully considered the rival contentions and went through the materials on record. Though very many grounds have been raised in the writ petition and I would find merit and substance in almost all of them, for the sake of brevity, I refrain from reiterating those contentions. There is no dispute that the pre-revision notice was issued by one Moorthy. Thereafter, there was a change of incumbent. Mr.Moorthy was succeeded by Thiru.Balamurugan who was succeeded by Thiru.T.Suresh Jeyaraj. It was Thiru.T.Suresh Jeyaraj who passed the impugned order.

5.The learned counsel for the petitioner places reliance on the circular No.32/2015/D3/25058/2015 issued by the Commissioner of Commercial Taxes, Chennai, dated 17.08.2015 and Paragraph No.5 of the said circular reads as follows:-

"5.The officer who issues notice and the officer who confirms such notice shall not be a different person. In other words, the pre-assessment notice issued by the predecessor shall not be confirmed by the succeeding officer without issuing a fresh notice by him."

6.The impugned order is not in conformity with the said requirement. That apart, personal hearing was not given to the petitioner. The Hon'ble Division Bench in G.V.Cotton Mills case has held that grant of personal hearing is absolutely essential. Therefore, on these two counts, the order impugned in the writ petition is vulnerable. It is accordingly quashed. The Writ Petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

// 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 Commercial Tax Officer,
Nagercoil Town,
Mead Street,
Nagercoil 629 001.

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+1 CC to M/s.SPL GP (SR-8181[F] dated 02/03/2021)

W.P.(MD)No.6321 of 2017

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nsm(CO)
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