



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.7016 & 7017 of 2017 and
W.M.P.(MD)No.5541 & 5542 of 2017

W.P.(MD)No.7016 of 2017

M/s.Vijayalakshmi Traders,
Rep. by its Proprietor,
S.Chandiran,
3/635, Sathur Road, Sivakasi,
Virudhunagar District - 626 128.

... Petitioner

Vs.

The Assistant Commissioner(CT)-IV,
Sivakasi,
Virudhunagar District.

... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of assessment dated 30.12.2016 received by the petitioner on 28.02.2017 passed by the respondent in his CST No.523736/04-05 and quash the same and to direct the respondent to pass fresh order after affording an opportunity to file objection and affording an opportunity of personal hearing for the assessment year 2004-05.

For Petitioner : Mr.K.Vadivelu,
for Mr.A.S.Mujibur Rahman.

For Respondent : Mr.G.Arjunan,
Government Advocate.

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W.P.(MD)No.7017 of 2017

M/s.Vijayalakshmi Traders,
Rep. by its Proprietor,
S.Chandiran,
3/635, Sathur Road, Sivakasi,
Virudhunagar District - 626 128.

... Petitioner

Vs.

The Assistant Commissioner(CT)-IV,
Sivakasi,
Virudhunagar District.

... Respondent



Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order of assessment dated 30.12.2016 passed by the respondent in his Assessment in TNGST No.6021534/04-05 received by the petitioner on 28.02.2017 and quash the same and to direct the respondent to pass fresh order after affording an opportunity to file objection and affording personal hearing for the assessment year 2004-05.

For Petitioner : Mr.K.Vadivelu,
for Mr.A.S.Mujibur Rahman.
For Respondent : Mr.G.Arjunan,
Government Advocate.
* * *

C O M M O N O R D E R

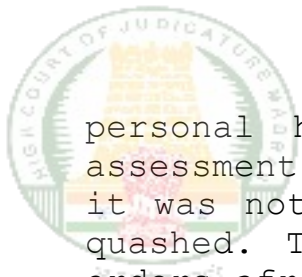
Heard the learned counsel on either side.

2. The petitioner is an assessee registered with the respondent. The cases on hand pertain to the assessment year 2004-2005 under the TNGST Act 1959 and CST Act 1956. This is the second round of litigation. The petitioner had earlier filed W.P.(MD) Nos.9540 and 9541 of 2007. Vide Order dated 26.02.2013, the matter was remitted and the respondent was directed to issue pre-revision notice to the petitioner within a period of three weeks from the date of receipt of a copy of this order. However, the respondent took three years to issue the pre-revision notice. On that ground, the orders impugned in these writ petitions cannot be quashed.

3. The petitioner appears to have admittedly received the pre-revision notice. Since no objections were forthcoming, the respondent was left with no other option but to go ahead and pass final orders. The same is assailed in these writ petitions.

4.The orders impugned in these writ petitions are liable to be quashed for the reason that no personal hearing was given to the petitioner.

5. The learned Special Government Pleader would point out that in the pre-revision notice a clause was incorporated, calling upon the petitioner to avail the opportunity of personal hearing. It has been held in one more than one case that the question of affording an opportunity of personal hearing while issuing pre-revision notice does not arise. The assessee has to be issued pre-revision notice and he will offer his objections. If the assessment authority is not satisfied with his objections, then



personal hearing will have to be granted and thereafter, the assessment authority will have to pass orders. Since in this case, it was not done, the orders impugned in these writ petitions are quashed. The writ petitions are allowed. The respondent to pass orders afresh in accordance with law.

WEB COPY

6. Mr.M.Balamurugan, jurisdictional Assistant Commissioner who is the competent authority is present through Video Conference. The petitioner will appear before the said authority on 24.03.2021 at 11.00 a.m. The petitioner will not be given any fresh notice of hearing. The petitioner shall however submit his objections within one week from the date of receipt of a copy of this order. On 24.03.2021, the petitioner can place all the materials in support of his case. Thereafter, it is for the respondent to pass orders afresh in accordance with law.

7. I make it clear that technical objections such as, the respondent is not the one who issued pre-revision notice etc. will not be urged in future. The petitioner also waives the requirement of issuance of independent notice from the respondent. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// 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(CT)-IV,
Sivakasi, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-9174[F] dated 05/03/2021)

+2 CC to M/s.A.S.MUJIBUR RAHMAN, Advocate (SR-9044[F] dated 05/03/2021)

W.P.(MD)Nos.7016 & 7017 of 2017

04.03.2021

ARK(CO)

TR(08.03.2021) 3P 5C

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