BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 02.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)No.7281 of 2017 and
W.M.P.(MD)No.5719 of 2017

M/s.A.J.Steels,
Rep. by its Partner B.Abdul Jaleel,
Sub Jail Road,Trichy. ... Petitioner

Vs.

The Assistant Commissioner (CT) (FAC),
Mailamchandai-II Assessment Circle,
Trichy - 20. ... Respondent

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records on the file of the respondent in TIN 33393501383/2015-16 dated 07.02.2017 and to quash the same is wholly without jurisdiction, being contrary to the provisions of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.S.Karunakar
For Respondent : Mr.G.Arjunan, Government Advocate.

O R D E R

Heard the learned counsel on either side.

2. The petitioner is a dealer registered with the respondent. The case on hand pertains to the assessment year 2015-2016. The respondent issued pre-revision notice dated 29.09.2016. It appears that the petitioner did not offer his response. Therefore, the respondent passed the impugned order dated 07.02.2017 confirming the proposal set out in the show cause notice. The same is assailed in this writ petition.

3. Even before commencing his argument, the petitioner's counsel submitted that the petitioner would pay a sum of Rs.10,000/- towards the tax demanded without prejudice to his contentions. He also pointed out that the petitioner has already paid 10% of the said demand pursuant to the condition imposed while granting interim order. This undertaking to pay a sum of Rs.10,000/- more is recorded.

4. Though the petitioner has not taken a specific plea, the learned counsel would contend that personal hearing was not granted. In the impugned order, there is no averment that personal hearing was granted. The respondent thought that since the petitioner did

not respond to the pre-revision notice, there is no need to grant personal hearing. 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."

5. The aforesaid ratio clearly applies to the case on hand. In this view of the matter, the order impugned in this writ petition is quashed. This writ petition is allowed. The petitioner is directed to pay a sum of Rs.10,000/-(Rupees Ten Thousand only) more towards the tax demanded within a period of three weeks from the date of receipt of a copy of this order. This payment will be without prejudice to the petitioner's contentions. The remittance of 10% earlier and the payment of Rs.10,000/- would abide by the outcome of the present proceedings.

6. The petitioner is given four weeks from the date of receipt of a copy of this order to offer his objections. If the respondent is not satisfied with the same, he will afford an opportunity of personal hearing and thereafter, pass orders afresh in accordance with law.

7. This writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// 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) (FAC),
Mailamchandai-II Assessment Circle,
Trichy - 20.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-8391[F] dated 03/03/2021)

W.P.(MD)No.7281 of 2017
02.03.2021

MA(CO)
TR(12.03.2021) 3P 3C