BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 23.02.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P.(MD)Nos.23873 & 23877 of 2019
and
WMP(MD)Nos.20495 & 20498 of 2019

M/s.Annai Agencies,
Rep.by its Proprietor
G.Cornelius ... Petitioner in both cases

Vs.

1.The Appellate Deputy Commissioner (ST),
Commercial Taxes Building,
Reserve line road, Palayamkottai,
Tirunelveli.

2.The State Tax Officer (Main),
Tuticorin-III Assessment Circle,
Tuticorin. ... Respondents in both cases

Common Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus calling for records pertaining to the impugned proceedings passed by the 2nd respondent in TIN.33085922722/2014-15 & 2015-16 and to quash the order dated 07.12.2017 and 13.12.2017 as the same is illegal and also passed by grossly violating the principles of natural justice and hence to redo the assessment after providing an opportunity of personal hearing to the petitioner as per the guidelines given by the Honourable Division Bench of this High Court reported in 33 VST 333 in the case of M/s.SRC Projects Private Limited represented by its Chief Executive Officer, Salem Vs.The Commissioner of Commercial Taxes, Ezhilagam, Chepauk, Chennai and another.

in both cases :

For Petitioner : Mr.B.Satheesh Murugan for Mr.K.Srinivasan
For Respondents : Mrs.J.Padmavathy Devi Special Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Special Government Pleaders for the respondents.

2.The petitioners are two in number. But the petitioner in both is one and the same. The assessment years pertain to the years 2014-15 and 2015-16. The impugned orders are liable to be quashed for the simple reason that opportunity of personal hearing was not afforded before passing the same. In ground No.E, the petitioner had specifically pleaded that the second respondent has straightaway passed the impugned order under Section 27 of the Tamil Nadu Value Added Tax, 2006 without granting opportunity of personal hearing and thereby violated the principles of natural justice.

3.Even though such a ground has been taken in the affidavit filed in support of the writ petition, the respondents have not controverted the stand taken by the petitioner. Though the learned Special Government Pleader called upon this Court to confirm the orders impugned in the writ petitions, as rightly pointed out by the learned counsel appearing for the petitioner, failure to give opportunity of personal hearing vitiates the impugned orders.

4.The issue is no longer *res integra*. The Hon'ble Division Bench of the 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."*

5.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 two more weeks from the date of receipt of copy of this order to offer his explanation/objection along with supporting documents. If the second respondent is not satisfied with the same, it is open to him to proceed in accordance with law. In that event, the second respondent has to necessarily afford an opportunity of personal hearing and pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

/TRUE COPY/

/ /2021
Sub Assistant Registrar

skm

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:

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Reserve line road, Palayamkottai,
Tirunelveli.

2.The State Tax Officer (Main),
Tuticorin-III Assessment Circle,
Tuticorin.

+2cc to Mr.Srinivasan, Advocate Sr.No.7094
+1cc to Special Government Pleader, Sr.No.6982

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NR (05/03/2021) 3P: 6C