BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.10684, 10685, 10686, 10687 and 10688 of 2017
and
W.M.P.(MD)Nos.8155, 8156, 8157, 8158 and 8159 of 2017

M/s. K M M Agency,
Represented by its Partner,
K.Mathan. ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (CT),
Madurai Rural (South) Assessment Circle,
Commercial Tax Buildings,
Madurai. ... Respondent in all W.Ps

Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for records on the file of the respondent in TIN 33234883333/2011-12, 2012-13, 2013-14, 2014-15 and 2015-16 dated 15.09.2016 and quash the same as illegal, arbitrary and in violation of the principles of natural justice, and direct the respondent to pass assessment order afresh after furnishing records as relied by them in the notice dated 29.07.2016 including the opportunity of being heard to the petitioner within such time as may be directed by this Court.

(In all W.Ps)
For Petitioner : Mr.S.Karunakar

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

COMMON ORDER

Heard the learned counsel on either side.

2.M/s.K M M Agency have filed these writ petitions in respect of the assessment years 2011-12 to 2015-16. The petitioner was issued with pre-revision notice dated 29.07.2016, following the inspection of the petitioner's premises by the Enforcement Wing Officials. The petitioner failed to submit their reply in time. As the result, the impugned orders came to be passed on 15.09.2016. Question the same, these writ petitions have been filed.

3.The petitioner's counsel points out that the major defect pointed out by the respondent rests on mismatch. But then, the procedure laid down in the decision reported in ***(2017) 99 VST 343 (JKM Graphics Solutions Vs. The Commercial Tax Officer)*** has not been followed.

4.That apart, no personal hearing was given to the petitioner. The Hon'ble Division Bench, in the case of G.V.Cotton Mills (P) Ltd., Vs. Assistant Commissioner (CT), Avarampalayam Assessment Circle, Coimbatore), dated 16.03.2018 in W.A.Nos.234 to 240 of 2015 held as follows:-

> *"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 preassessment notice would not give a right to the Assessment Officer to deny opportunity of personal hearing to the assessee."*

5.Therefore, on these twin grounds, the orders impugned in the writ petitions are quashed. The writ petitions are allowed. The matters are remitted to the file of the respondent. The petitioner's counsel states that the petitioner had already paid 50% of the tax amount. This remittance will abide by and get adjusted based on the order passed by the respondent following this remand. The petitioner is given four weeks time to offer his explanation. The respondent will consider the same, if he is not satisfied, he will issue personal hearing notice and after hearing the petitioner, pass appropriate orders in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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),
Madurai Rural (South) Assessment Circle,
Commercial Tax Buildings,
Madurai.

+1 CC to M/s.SPL GP (SR-11020[F] dated 15/03/2021)

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-11059[F] dated 15/03/2021)

W.P(MD)No.10684, 10685, 10686, 10687 and 10688 of 2017
12.03.2021

TP(CO)
TR(20.04.2021) 3P 4C