BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.11637, 11638, 11639 and 11640 of 2017

and

W.M.P.(MD)Nos.8974, 8975, 8976 and 8977 of 2017

Tvl.Meenakshi Enterprises,
Represented by its Managing Partner,
N.Muthaiya ... Petitioner in all W.Ps

Vs.

The Assistant Commissioner (FAC),
Thanjavur II Assessment Circle,
Thanjavur. ... 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 Certiorari, to call for the records of the respondent in his proceedings in TIN/33643821006/2007-08, 2010-11, 2008-09 and 2009-2010 dated 29.01.2016 respectively and quash the same as illegal.

(In all W.Ps)

For Petitioner : Mr.P.R.Kumar
For Respondent : Mr.G.Arjunan,
Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.Tvl.Meenakshi Enterprises is the petitioner in these four writ petitions. They pertain to the assessment years 2007-08 to 2010-11. The petitioner is an assessee registered with the respondent. The petitioner's assessment was finalized on deemed assessment basis under Section 22(2) of the Tamil Nadu Value Added Tax Act. Whileso, there was an inspection of the petitioner's place of business on 12.11.2010. Certain discrepancies were noticed. Immediately thereafter the petitioner gave an explanation in writing on 22.11.2010. Documents were also enclosed. In fact the same duly acknowledged by the office of the Assistant Commissioner (CT), Thanjavur II Assessment Circle, Thanjavur. Based on the inspection proposals, pre-revision notice was issued. Since the petitioner had already given explanation on 22.11.2010, the petitioner was under the impression that he need not give any independent objection to the pre-revision notice.

3.Thereafter, the respondent proceeded in the matter as if the petitioner has not made good his contentions at all. Therefore, the impugned orders came to be passed confirming the proposals set out in the show cause notice. The same is assailed in the writ petition.

4.The respondent filed a detailed counter affidavit and the learned Government Advocate took me through the contents therein. The learned Government Advocate would also point out that the writ petitions have to be dismissed because the appeal remedy has not been exhausted.

5.I carefully considered the rival contentions and went through the materials on record. It is obvious that the impugned orders have to be quashed for more reasons than one. Though the petitioner has not given objections in response to the pre-revision notice, the fact remains that his defence is already there on record. In fact the petitioner has also enclosed the relevant documents. Without considering the same, the impugned orders have been passed. In other words, relevant materials were not taken into account by the respondent.

6.That apart, personal hearing was not afforded 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."*

7.On these grounds, the orders impugned in these writ petitions are quashed. The writ petitions are allowed. The matters are remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AE)

// 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 (FAC),
Thanjavur II Assessment Circle,
Thanjavur.

+1 CC to M/s.D.VENKATESH, Advocate (SR-12153[F] dated 18/03/2021)

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17.03.2021

MJ(CO)
TR(24.04.2021) 3P 3C