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)No.11890 of 2017
and
W.M.P.(MD)No.9156 of 2017

M/s.Kader & Kader Marketing Pvt. Ltd.,
Represented by its Director
Mohammed Ibrahim. ... Petitioner

Vs.

The Commercial Tax Officer-II,
Commercial Tax Building,
Thanjavur. ... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for records in TIN No.33133824827/2013-14 dated 14.11.2016 and to quash the same as illegal, arbitrary and against the judgment of this Court reported in the case of the Infiniti Wholesale Limited Vs. Assistant Commissioner (CT), Koyambedu Assessment Circle, Chennai reported in [2015] 82 VST 457 and (2017) 99 VST 343 (Mad) in the case of M/s.JKM Grphics Solutions Pvt. Ltd., further direct the respondent to afford an opportunity of personal hearing and consider the relevant records and representation dated 25.11.2016 and thereafter to pass order afresh.

For Petitioner : Mr.S.Karunakar.

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

ORDER

Heard the learned counsel on either side.

2.The petitioner is an assessee registered with the respondent. The assessment year pertains to 2013-14. The petitioner's place of business was inspected by the Enforcement Wing Officials on 23.12.2015. Certain discrepancies were noticed. Based on the same, the pre-revision notice was issued. The petitioner sought time to offer his objections. But without giving any personal hearing, the impugned order came to be passed. Questioning the same, this writ petition came to be filed.

3.The learned Government Advocate submitted that in the pre-revision notice in the final paragraph an opportunity of personal hearing was offered to the petitioner herein. He therefore submitted that the impugned order cannot be said to be violative of the principles of natural justice.

4.I am unable to agree with the said contention taken by the learned Government Advocate. Vide order dated 28.10.2014 in W.P.No.18691 to 18696 of 2014 (Amararaja Batteries Limited Vs. Assistant Commissioner, Kilpauk Assessment Circle, Chennai), it was held as follows:-

> "7. *As noticed above, while issuing the notice dated 30.12.2013 the respondent had stated that the petitioner/ dealer are given an opportunity of hearing and file their objections if any, within 15 days of the receipt of the notice. Further, the notices indicate that apart from the petitioner's right to file their objection, opportunity of being heard would also be afforded. Under normal circumstances, the first requirement is to file an objection/reply to show cause notice. The opportunity to file a reply is to enable the dealer to clarify the factual issues. Therefore, after objections were filed before the respondent, the respondent should have fixed a date for personal hearing and afforded an opportunity to the petitioner to appear before the respondent and make their submission and produce the records in support of their claim. In fact, Circular No. 07/2014 mandates such a procedure, which specifically states that, before passing a revision order, the dealer should be given a reasonable opportunity and personal hearing and no order of revision should be made without affording an opportunity to the dealer as provided under the provisions of the Act. Though there would have been an intention for giving personal hearing in the show cause notice, 7 the personal hearing ought to be fixed by the respondent and not that the petitioner should seek for a personal hearing to produce the records, since it is a proposal to revise an assessment already made. Since there is violation of principles of natural justice this Court has to interfere with the revision order. Merits of the assessment are not gone into and these issues are left open.*"

5.In the case on hand, the personal hearing notice was not given. Therefore, the impugned order is liable to be quashed on that ground. The case of the respondent against the petitioner rests on mismatch. But then, no enquiry with the other end dealer was conducted. The procedure laid in the decision reported in ***(2017) 99 VST 343 (JKM Graphics Solutions Vs. The Commercial Tax Officer)*** was not followed. On this ground also, the impugned order is vulnerable.

6.For these twin reasons, the order impugned in this writ petition is quashed. The writ petition is allowed. The matter is remitted to the file of the respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-II)

// 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 Commercial Tax Officer-II,
Commercial Tax Building,
Thanjavur.

+1 CC to M/s.S.KARUNAKAR, Advocate (SR-11060[F] dated 15/03/2021)

+1 CC to M/s.SPL GP (SR-11138[F] dated 15/03/2021)

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NSM(CO)
TR(31.03.2021) 3P 4C