BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.27021, 27022 & 27024 of 2019
and
W.M.P.(MD)Nos.23371, 23373 & 23375 of 2019

Tvl.Saravana Furniture,
Represented by its Proprietor J.Saravakumar,
aged about 34 years,
S/o.Jeyapandian,
No.206/283, Gandhi Road,
Sivagangai-630 561. ... Petitioner in all W.Ps.

-Vs-

1. The Commissioner of Commercial Taxes,
   O/o, the Principal and Special Commissioner of Commercial Taxes,
   Ezhilagam, Chepauk,
   Chennai-600 005.

2. The Assistant Commissioner (ST),
   Sivagangai Assessment Circle,
   Commercial Taxes Office,
   No.3, Oversupillai Street,
   Sivagangai-630 561. ... Respondents in all W.Ps.

Prayer in W.P.(MD)No.27021 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33635403033/2013-14, dated 21.05.2019 and quash the same.

Prayer in W.P.(MD)No.27022 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33635403033/2014-15, dated 21.05.2019 and quash the same.

Prayer in W.P.(MD)No.27024 of 2019: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the second respondent in TIN: 33635403033/2015-16, dated 21.05.2019 and quash the same.

For Petitioner : Mr.B.Rooban
for Mr.Raja Karthikeyan

For Respondents : Mr.G.Angappan
(in all W.Ps.) Government Advocate

ORDER

Heard the learned counsel on either side.

2.Tvl.Saravana Furniture is the writ petitioner in all the three writ petitions. They pertain to the assessment years 2013-14, 2014-15 & 2015-16. The petitioner's assessment concluded under Section 22(2) of TNVAT Act on deemed assessment basis was sought to be reopened. Based on the discrepancies noticed in the departmental website, the second respondent issued pre-revision notice. The petitioner only sought adjournment. They failed to give any objections. Thereafter, the impugned orders came to be passed confirming the proposals set out in the notices. Questioning the same, this writ petitions have been filed.

3.The respondents have filed a counter affidavit and the learned Government Advocate took me through the contentions set out therein and wanted me to sustain the orders impugned in these writ petitions.

4.I carefully considered the rival contentions and went through the materials on record. The impugned orders are liable to be quashed for two reasons:-

(i)When the impugned orders rest on the discrepancies noticed from the particulars retrieved from the departmental website, the respondent ought to have conducted an enquiry with the other dealer. Such procedure was not adopted.

(ii) Personal hearing was not granted.

5.Even if the assessee failed to respond the pre revision notices, the Hon'ble Division Bench, in G.V.Cotton Mills case, held that affording the opportunity of personal hearing is mandatory. 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."

6.For the aforesaid reasons, the impugned orders are quashed. The Writ Petitions are allowed. The matters are remitted to the file of the second respondent. The petitioner is given three weeks time from the date of receipt of a copy of this order to offer his explanation. If the second respondent is not satisfied even thereafter, the second respondent will afford the opportunity of personal hearing to the petitioner and thereafter pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar ()

// 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

1.The Commissioner of Commercial Taxes,
O/o, the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2. The Assistant Commissioner (ST),
Sivagangai Assessment Circle,
Commercial Taxes Office,
No.3, Oversupillai Street,
Sivagangai-630 561.

+1 CC to M/s.B.ROOBAN, Advocate (SR-12187[F] dated 18/03/2021)

W.P.(MD)Nos.27021, 27022 & 27024 of 2019
and
W.M.P.(MD)Nos.23371, 23373 & 23375 of 2019
17.03.2021

VB (30/04/2021) 4P / 4C