BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.03.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
W.P(MD)Nos.1576, 1577,1578, 1579, 1580, 1581 and 1582 of 2017
and
W.M.P.(MD)Nos.1276, 1277, 1278, 1279, 1280, 1281 and 1282 of 2017

M/s.Sri Arun Agencies,
No.2-5 Double Mall Street,
Trichy - 620 002,
Rep. by its Proprietor,
A.Anand. ... Petitioner in all W.P.s

Vs.

The Assistant Commissioner of Commercial Taxes,
Singarathope Assessment Circle,
Tiruchirapalli. ... Respondent in all W.P.s

Prayer W.P.(MD)No.1576 of 2017:-: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the respondent herein bearing TIN No.33143580430/2009-10, dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment Year 2009-10/33143580430, and quash the same and direct the respondent to refund the sum of Rs.10,981/- recovered from the petitioner as ITC reversal.

Prayer in WP(MD). 1577/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent herein bearing TIN No. 33143580430/2010-11 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment Year 2010-11/33143580430, and quash the same and direct the respondent to refund the sum of Rs. 11,809/- recovered from the Petitioner as ITC reversal.

Prayer in WP(MD). 1578/ 2017 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent herein bearing TIN No.33143580430/2011-12 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment year 2011-12/33143580430 and quash the same and direct the respondent to refund the sum of Rs.37,927/- recovered from the petitioner as ITC reversal .

Prayer in WP(MD). 1579/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent herein bearing TIN No.33143580430/2012-13 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment Year 2012-13/33143580430, and quash the same and direct the Respondent to refund the sum of Rs.41,695/- recovered from the Petitioner as ITC reversal.

Prayer in WP(MD). 1580/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, calling for the records relating to the proceedings of the respondent herein bearing TIN No. 33143580430/2013-14 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment Year 2013-14/33143580430, and quash the same and direct the respondent to refund the sum of Rs. 1,08,293/- recovered from the Petitioner as ITC reversal.

Prayer in WP(MD). 1581/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent herein bearing TIN No.33143580430/2014-15 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment year 2014-15/33143580430 and quash the same and direct the respondent to refund the sum of Rs.1,10,698/- recovered from the petitioner as ITC reversal .

Prayer in WP(MD). 1582/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the Respondent herein bearing TIN No.33143580430/2015-16 dated 15.12.2016 and Notice of Penalty in Form RR bearing Assessment Year 2015-16/33143580430, and quash the same and direct the Respondent to refund the sum of Rs.1,90,453/- recovered from the Petitioner as ITC reversal.

For Petitioner all W.P.s : Ms.AL.Ganthimathi

For Respondent all W.P.s : Mr.G.Arjunan, Government Advocate.

COMMON ORDER

Heard the learned counsel on either side.

2.M/s.Sri Arun Agencies filed these writ petitions in respect of the assessment years 2009-10 to 2015-16.

3.Though very many grounds have been urged in these writ petitions, the cases on hand can be disposed on a short ground. The respondent issued pre-revision notices on 27.10.2016. The petitioner gave their explanation on 29.11.2016. Thereafter, the impugned orders were passed on 15.12.2016. But before passing the impugned orders, no personal hearing was given.

4.When this was put to the respondent, the assessing officer informed the Court that in the penultimate paragraph of the pre-revision notices, it has been specifically mentioned that the petitioner may also avail an opportunity of being heard in person within a period of 15 days from the date of receipt of show cause notice. But this incorporation of an offer to grant personal hearing in the pre-revision notice has been held to be not sufficient in compliance to the principles of natural justice. 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.Respectfully following the aforesaid ratio, the orders impugned in these writ petitions are quashed. The writ petitions are allowed. The matters are remitted to the file of respondent to pass orders afresh in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (RTI)

// 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 of Commercial Taxes,
Singarathope Assessment Circle,
Tiruchirapalli.

+1 CC to M/s.AL.GANTHIMATHI, Advocate (SR-11247[F] dated 16/03/2021)

+1 CC to M/s.SPL GP (SR-11613[F] dated 16/03/2021)

W.P(MD)Nos.1576, 1577,1578, 1579, 1580, 1581 and 1582 of 2017
15.03.2021

SSS(CO)
TR(28.04.2021) 4P 4C