BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.08.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

W.P(MD).Nos.19092 and 19093 of 2022
and
W.M.P(MD).Nos.13941 and 13950 of 2022

W.P(MD).No.19092 of 2022

Tvl.R.J.Industries,
Represented by its Proprietor,
Selva Jothi. ... Petitioner

Vs.

1.The Appellate Deputy Commissioner (ST),
Tirunelveli, Palayamkottai.

2.The State Tax Officer,
Tuticorin-III Assessment Circle,
Tuticorin. ...Respondents

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 pertaining to the impugned proceedings passed by the second respondent in TIN 33295924401/2012-2013, dated 27.01.2022 and quash the same is passed without obliging the common order passed by this Court in W.P(MD)Nos.11509 and 11510 of 2018, dated 04.03.2021 and also passed by grossly violating the principles of natural justice and to direct the second respondent to redo the assessment after considering petitioner's objections, dated 02.02.2017, 28.02.2017 and 10.03.2017 and also after providing petitioner an opportunity of personal hearing.

For Petitioner : Mr.K.Srinivasan
For Respondents : Mr.P.Subbaraj
Special Government Pleader

W.P(MD).No.19093 of 2022

Tvl.R.J.Industries,
Represented by its Proprietor,
Selva Jothi. ... Petitioner

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For Petitioner : Mr.K.Srinivasan
For Respondents : Mr.P.Subbaraj
Special Government Pleader

COMMON ORDER

The petitioner is a proprietor of R.J.Industries filed returns for the assessment year 2012-2013 and 2013-2014. The second respondent passed deemed assessment orders by accepting that the total and taxable turnover of Rs.64,24,348/- and Rs.24,77,867/- for the assessment year 2012-2013 and 2013-2014 respectively. This being so, on 03.11.2014, Enforcement Wing Officials had conducted an inspection and pointed out certain defects, irregularities and found that two sale bills have not been accounted and they have also estimated suppression of some sale as the petitioner has not produced the profit and loss account before the Enforcement Wing Officials.

2. He further submitted that on receipt of the inspection proposal, the second respondent issued the pre-revision notice, dated 23.11.2016. Thereafter, the petitioner filed his objection on 02.02.2017 and 20.02.2017 and also requested for personal hearing. The petitioner appeared on 28.02.2017, gave explanation and produced the records available with him. The profit and loss account and the balance sheet were also produced on 10.03.2017 before the second respondent. Thereafter, the petitioner received

no communication from the second respondent. Suddenly, the petitioner received a revision order, dated 19.03.2018 from the second respondent, who has newly taken charge from the then second respondent, which was received by the petitioner on 04.04.2018.

3. The petitioner filed W.P(MD)Nos.11509 and 11510 of 2018 challenging the assessment order for the year 2012-2013 and 2013-2014, this Court finding that no proper opportunity has been given to the petitioner and directed the assessing officer to pass fresh orders in accordance with law, of course, after giving opportunity of hearing the petitioner. Thereafter, not following the directions given by this Court, the second respondent has now passed the impugned order, dated 27.01.2022, which was served to the petitioner on 06.04.2022. The petitioner was not served with any show cause notice, provided any opportunity for personal hearing and second respondent merely confirm the earlier order, dated 19.03.2018. The petitioner had sent a representation to confirm how recording found in the impugned order that personal hearing notice, dated 11.01.2022 had been served to the petitioner. Thereafter, the petitioner made representation notice under Right to Information Act on 04.05.2022 seeking proof of serving personal hearing notice, but the second respondent failed to provide any proof. According to

the petitioner, the petitioner was not given an opportunity of hearing and there was no material and proof to confirm the petitioner's personal hearing notice. In sum and substance, the petitioner was not given opportunity of hearing and order has been passed violating the directions of this Court in W.P(MD)Nos. 11509 and 11510 of 2018. On this core alone, the impugned order is liable to be quashed.

4. The learned Special Government Pleader for the respondents submits that after considering the petitioner's representation, to give her an opportunity of personal hearing and thereafter, shall proceed with the assessment for the year 2012-2013 and 2013-2014 affresh and shall pass appropriate orders.

5. In view of the same, this Court set aside the impugned order, dated 27.01.2022 for both the assessment years 2012-2013 and 2013-2014 and directed the second respondent to issue fresh notice to the petitioner and give her an opportunity for personal hearing and consider objections along with any materials produced, thereafter, to proceed in accordance with law following the principles of natural justice. The second respondent is directed to complete the entire proceedings within a period of three months from the

date of receipt of copy of this order. The petitioner undertakes to co-operate and to participate in the enquiry without any delay.

6. With the above direction, these writ petitions stand disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

22.08.2022

Index : Yes / No
Internet : Yes/ No
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To

1.The Appellate Deputy Commissioner (ST),
Tirunelveli, Palayamkottai.

2.The State Tax Officer,
Tuticorin-III Assessment Circle,
Tuticorin.

M.NIRMAL KUMAR, J.

sn

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