IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM :

The HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No. 6336 of 2020
and W.M.P.Nos.7466 & 7468 of 2020

Muthoot Exim Private Limited,
Rep. By its Manager / Authorized Person,
Ankit Nair,
Ashok Vatika, A3, No.1,
Gurusamy Road, Chetpet,
Chennai – 600 031. .. Petitioner

vs

The State Tax Officer,
Kilpauk Assessment Circle,
No.F50, First Avenue,
Anna Nagar East,
Chennai – 600 102. .. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus calling for the records in CST/869245/2017-18 dated 20.11.2019 on the file of the respondent and quash the same as illegal, against the principles of natural justice and direct the respondent to give opportunity of personal hearing to the petitioner.

For Petitioner	:	Ms.S.Bhargavi
For Respondent	:	Mr.T.N.C.Kaushik Additional Government Pleader

ORDER

Heard Ms.S.Bhargavi, learned counsel for the petitioner and Mr.T.N.C.Kaushik, learned Additional Government Pleader for the respondent.

2. An identical situation as arising in the present case, arose in the case of the same petitioner for the period 2016 – 2017, when an order of assessment was passed on 20.11.2019 under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short, 'Act'). That order was the subject matter of challenge in W.P.No.5305 & 5311 of 2020 and by order dated 09.11.2022, this Court held as follows:-

> *"These writ petitions challenge orders of assessment passed under the provisions of the Central Sales Tax Act, 1956 (in short 'CST Act') in line with the procedure set out under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (in short 'TNVAT Act') in respect of the periods of assessment 2015-16 and 2016-17.*
>
> *2. The petitioner, a firm, represented by its manager has challenged the assessments on the ground that there is violation of principles of natural justice insofar as (i) the petitioner has not been granted proper opportunity of hearing and (ii) the impugned orders of assessment was not served upon it.*
>
> *3. Mrs.K.Vasantamala, learned Government Advocate, who appears for the respondents produces proof of service of the orders on the petitioner. To this extent, the contention of the*

petitioner that service of the orders has not been effected is found to be incorrect.

4. However, the submission that the petitioner has not been granted opportunity of hearing, holds some merit. A pre-assessment notice was issued to the petitioner on 30.09.2019, wherein the respondent proposes to deny the exemption claimed on stock transfer.

5. Dual opportunity is set out under the same notice for the petitioner to file objections to the proposals with documentary evidence within 15 days from the date of receipt of the notice and to appear on any working day within the aforesaid 15 days. The aforesaid opportunity has been extended under threat of confirmation of the proposal based on records.

6. In response, the petitioner has written back on the same date asking for 15 days time to submit the Forms. This letter has, admittedly, been received by the Assessing Officer, who has acknowledged the same. Learned Government Advocate would also fairly confirm receipt of this request.

7. Despite this, the Assessing Authority has merely proceeded to pass the impugned orders of assessment on 20.11.2019 without either intimating the acceptance or rejection of the request for adjournment and most importantly, without affording an opportunity of personal hearing fixing the date and time, as required by the statute and several circulars that have been issued by the Commissioner of Commercial Taxes.

8. In my considered view, the violation of principles of natural justice as aforesaid would vitiate the assessments. This is specifically for the reason that the officer has, in the impugned order, stated that upon receipt of preassessment notice the petitioner has neither filed objections nor sought any adjournment, the latter seen to be contrary to the materials on record.

9. In light of the aforesaid discussion, the impugned orders are set aside and these writ

> *petitions are allowed. No costs. Connected miscellaneous petitions are closed."*

3. Both learned counsel would concur the position that the facts and legal position are identical except the enactments would vary, the present impugned order having been passed under the provisions of Central Sales Tax, 1959 for the period 2017 – 2018. This distinction is really not material in light of the apparent violation of principles of natural justice. Thus, the observations in order dated 09.11.2022 and conclusion thereof are adopted in the present case as well.

4. In view of above, the impugned order is set aside and the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

08.03.2023

Index:Yes/No
Neutral Citation:Yes
ssm

To
The State Tax Officer,
Kilpauk Assessment Circle,
No.F50, First Avenue,
Anna Nagar East,
Chennai – 600 102.

DR. ANITA SUMANTH,J.

ssm

W.P.No.6336 of 2020

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