BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.08.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).Nos.12721 to 12723 of 2021 and
WMP(MD)Nos.9912, 9916 and 9917 of 2021

Tvl.Shisha Sri Timber,
represented by its Proprietor,
S.Ruba,
No.10/2-3, Aashramam,
Susindram, Nagarkovil,
Kanyakumari District-629 704. ... Petitioner in all cases

Vs.

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

2.The State Tax Officer (Investigation),
Intelligence Wing,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelvei District-627 002. ... Respondents in all cases

Prayer in W.P.(MD)No.12721 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the 2nd respondent in GSTIN.33IFVPS6623P1Z9/2017-18, dated 31.10.2020 and to quash the same.

Prayer in W.P.(MD)No.12722 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the 2nd respondent in GSTIN.33IFVPS6623P1Z9/2018-19, dated 31.10.2020 and to quash the same.

Prayer in W.P.(MD)No.12723 of 2021 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for records pertaining to the impugned proceedings of the 2nd respondent in GSTIN.33IFVPS6623P1Z9/2019-20, dated 31.10.2020 and to quash the same.

In all cases:

For Petitioner : Mr.B.Rooban
for M/s.Raja.Veeramanikandan

For Respondents : Mr.R.Suresh Kumar
Additional Government Pleader

COMMON ORDER

These writ petitions are filed challenging the assessment orders.

2. The petitioner is a Proprietor doing business of sale of timbers and logs in the name and style of Shisha Sri Timber holding GST Registration No. 33IFVPS6623P1Z9.

3.The contention of the petitioner is that the respondents issued the first notice DRC- 01A, dated 24.03.2020. On receipt of such notice, the petitioner has submitted an elaborate objection, dated 17.07.2020. The respondents without properly considering the petitioner's explanation had issued demand cum show cause notice, dated 02.09.2020. The contention of the petitioner is that the said show cause notice directed the petitioner to submit an explanation why the proposal shall not be confirmed as stated in the show cause notice. The said show cause notice was signed on 02.09.2020 and sent through registered post on 01.10.2020 and the same was received by the petitioner on 05.10.2020.

4. The further contention of the petitioner is that the petitioner ought to have filed objection on or before 04.11.2020. But the respondent without giving clear full 30 days, had passed the impugned order on 31.10.2020. Therefore, there is clear violation of principles of natural justice.

5. The next contention of the petitioner is that under Section 75(4), the respondents should grant proper opportunity and the same is extracted

hereunder:

> *"Section 75(4):- An **opportunity of hearing** shall be granted where a request is received in writing from the person chargeable with tax or penalty or **where any adverse decision is contemplated against such person**."*

6. The contention of the petitioner is if personal hearing is not sought and if the respondents are going to pass adverse order, the respondents are bound to grant personal hearing. However, this contention was refuted by the respondents stating that the petitioner has not sought for any personal hearing. But on reading the provision, it is evident that the later part of the said provision is applicable in the petitioner's case, wherein it states "***where any adverse decision is contemplated against such person",*** then opportunity ought to be granted. In such circumstances, the respondents are bound to grant personal hearing to the petitioner, if the respondents are contemplated to pass adverse order.

7. In the present case, the respondents have passed adverse orders,

therefore, non-granting of personal hearing is affecting the rights of the petitioner and the same is against the provisions of Section 75(4). Hence, the impugned orders are passed without giving opportunity, therefore, it is violating the principles of natural justice and is liable to be quashed.

8. The 3rd contention of the petitioner is that the 2nd respondent is the investigation officer who is not having any power to pass the assessment orders. As per the circular dated 31.05.2019, the assessing officer ought to pass the assessment order. The relevant portion of the circular is extracted hereunder:

> *"12. The proper officer notified as adjudicating authority shall finalize the adjudication in respect of cases not finalized by the Roving kid during their duty hours and which were handed over to them by the Roving squad, at the earliest to the extent possible, but not later than 30 days from the date of completion of inspection or occurrence of the offence. However, the period of 30 days may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint Commissioner (Intelligence) for a further period not exceeding 30 days and further extension of time shall be granted with the approval of the Commissioner of Commercial Taxes. Where the proceeding is stayed by an order of the court or Appellate Tribunal or by any competent authority, the period of such stay shall be excluded in computing the*

above specified period. "

As per the circular the Jurisdictional Assessing Officer ought to have passed an order. In the present case, the investigation officer has passed the orders. Therefore, the assessment orders are against the circular issued by the respondents. Circulars are binding on the officials. Even though it is not binding the assessee, it is definitely binding on the authorities. Therefore, this Court is of the considered opinion that the assessment orders are passed against the circular.

9. For the reasons supra, the impugned orders cannot be sustained and hence, the impugned orders are quashed. The Assessing Officer shall grant opportunity to the petitioner, conduct fresh enquiry and pass orders. The said exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

10.With the above said observation, the writ petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

10.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Tmg

To

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

2.The State Tax Officer (Investigation),
Intelligence Wing,
Commercial Taxes Building,
Reserve Line Road,
Palayamkottai,
Thirunelvei District-627 002.

S.SRIMATHY, J.

Tmg

W.P.(MD).Nos.12721 to 12723 of 2021

10.08.2023