BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD).No.23639 of 2023
and
W.M.P.(MD).No.19811 of 2023

A.M.N.Jewellers Private Limited,
Represented by its Director V.Dhamodaran,
No.156-D, Big Bazaar Street, Trichy. ... Petitioner

Vs.

The Assistant Commissioner (ST),
Gandhi Market Assessment Circle,
Commercial Tax Buildings,
Trichy. ... Respondent

Prayer : 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 on the file of the respondent in TIN 33163381763/2016-17 dated 28.02.2023 issued by the respondent and quash the both are wholly without jurisdiction, arbitrary, illegal and without authority of law and direct the respondent to conduct proper enquiry as directed by the learned First appellate authority namely the Appellate Deputy Commissioner (CT) (FAC) vide his order dated 05.07.2018 in VAT AP No 27/2018 including the opportunity of personal hearing to the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.S.Karunakar

For Respondent : Mr.M.Ramesh,
Government Advocate.

ORDER

This Writ Petition is filed to quash the impugned order dated 28.02.2023 and with a consequential direction to the respondent to conduct proper enquiry as directed by the First Appellate Authority namely the Appellate Deputy Commissioner (CT) (FAC) vide his order dated 05.07.2018.

2. The respondent while passing the original assessment order had made four additions, aggrieved over the petitioner had preferred appeal before the Appellate Authority namely, the Appellate Deputy Commissioner (CT) (FAC). The appellate authority has considered the petitioner's claim and deleted two additions. As far as other two additions are concerned, the appellate authority has remitted back to the original authority to verify and allow the petitioner to cross examine and conduct proper enquiry and thereafter pass orders. The original authority has allowed the petitioner for cross examination and also allowed the petitioner to submit all relevant records and evidence. But the

respondent did not pass any orders. But suddenly after five years the respondent had passed orders without verifying the records. The petitioner has also submitted the cross examination and the report submitted by the Gold Smith. The respondent has not taken all these factors into consideration. It is pertinent to note that the subsequent authority has passed an order. According to the petitioner, the personal hearing ought to be granted, if subsequent officer has assumed the office. For which the petitioner is relying on the Circular No. 12/2022 LW/12/3040383/2022 dated 26.09.2022, wherein it is stated that the respondent is bound to grant personal hearing. The relevant portion is extracted hereunder:

> ***e) Personal Hearing and Decision by the same officer:***
>
> *The requirement of fair hearing involves decision being taken by the officer, who heard the case. If after hearing a case that particular officer is transferred, normal rule would be that the successor must hear the arguments afresh and pass orders, as per due procedure.*

3. The respondent is bound by the Circulars issued by their own Department. When the circular directs to hear the arguments afresh when the successor officer assume charge, then the respondent is bound to grant opportunity. Therefore, the impugned order is quashed. The respondent is

directed to allow the petitioner to cross examine the witness, the petitioner shall submit the report of the Gold Smith and then the respondent shall grant personal hearing to the petitioner. Thereafter, the respondent shall consider and pass orders and the said exercise shall be completed within a period of twelve (12) weeks from the date of receipt of a copy of this order.

4. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.09.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
Nsr

To

The Assistant Commissioner (ST),
Gandhi Market Assessment Circle,
Commercial Tax Buildings,
Trichy.

S.SRIMATHY, J.

Nsr

W.P.(MD).No.23639 of 2023

27.09.2023