BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE S. SRIMATHY

W.P(MD) Nos.23440, 23442, 23443, 23450 to 23452 of 2023
and
W.M.P.(MD)Nos.19654, 19656, 19658, 19659, 19660,
19662, 19664 and 19666 of 2023

W.P(MD) No.23440 of 2023:

M/s.NCNTV Arun Ram Industries,
(represented by its Proprietor,
C.Thiayagarajan,
15/43/A3, Thickanamcode,
Kalkulam, Nagercoil,
Kanyakumari District,
Tamil Nadu-629 804. :Petitioner

..Vs..

1.The State Tax Officer (Inspection),
Office of the Deputy Commissioner,
(S.T.) (Inspection), Tirunelveli.

2.The Joint Commissioner (ST) (FAC)/
Revisional Authority,
Tirunelveli (Intelligence), Tirunelveli. : Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of to issue a writ, order or direction, more particularly in the nature of a WRIT OF CERTIORARIFIED MANDAMUS, calling for the records on the file of the 2nd respondent herein in Proc.No.6393/A10/2022, dated 04.07.2023, to quash the same while directing the 2nd respondent to re-dispose the revision filed by the petitioner before the 2nd respondent on 01.11.2022 invoking Section 108 of the Tamil Nadu Goods and Service Tax Act, 2017 and arising out of the assessment period, July 2017 to March 2018 on merits.

In all cases:

For Petitioner	:	Mr.N.Prasad
For Respondents	:	Mr.B.Saravanan Additional Government Pleader

COMMON ORDER

The writ petition in W.P.(MD)No.23450 of 2023 is filed for writ of Certiorari, to quash the impugned order dated 09.08.2021, arising out of the assessment period April 2018 to March 2019.

2. The respondents have issued the show cause notice, dated

19.04.2021 and granted personal hearing on 30.04.2021 at 11.00 AM. However, the petitioner has responded to the said show cause notice only on 14.07.2021. The respondents have taken the objection on record before passing the impugned order and have stated that the petitioner has not submitted any valid records or details to substantiate the claim. The relevant portion of the impugned order is extracted hereunder:

> *"The dealers in their letter dated 22-07-2021 have filed their objections as narrated in the earlier paras (defect-wise) In a casual manner only, without any valid details/records in support of their claims., Sufficient opportunities from the date of inspection were already given to the taxable person for filing details/records. But the taxable person failed to do so.*
>
> *The taxable person has to satisfy the Inspecting authority that there is no evasion of tax on the part of the taxable person. The taxable person has to prove with the supportive documents that there is no issue related to the notice dated 19-04-2021. Further, for surprise inspection, the various defects pointed out would not have come to the light."*

3. Admittedly, the respondents have fixed the personal hearing on

30.04.2021 for the notice dated 19.04.2021, but the petitioner replied to the said notice on 14.07.2021. After receipt of such reply, then the respondent is bound to grant personal hearing, but the respondents had not granted any personal hearing to the petitioner. When the authority is adjudicating under Section 75 under Sub Clause 4, the respondent is bound to grant personal hearing to the assessee for which the petitioner relies on the judgment of the Hon'ble Division Bench of this Court in W.A.Nos.10 to 12 and 15 to 18 of 2021 in the case of ***Emrald Resilient Tyre Manufacturers Private Limited Vs. The Assistant Commissioner,*** vide judgment, dated 21.01.2021, wherein it has been held as under:

> *"6.With regard to the allegation of violation of principles of natural justice, which was taken as a ground in the writ petitions, the learned Single Bench took a view that opportunity was afforded to the appellant not once, but twice, but they did not avail the same. Therefore, it ultimately concluded that the Writ Court will not exercise its discretion and the writ petitions are not maintainable. Though we fully agree with the legal aspect as brought out by the learned Single Bench in the impugned order, we have taken note of the factual position in the assessee's case and would make a slight departure from the ultimate conclusion reached by the learned*

Single Bench. Though we fully agree with regard to the opinion rendered by the learned Single Bench qua the availment of alternate remedy in respect of cases arising under tax statute, we are inclined to take a slightly different view on the concluding part of the order owing to the fact that the first pre-revision notice given by the Assessing Officer granted 15 days time to the appellant to file their objections and also avail an opportunity of personal hearing. The effectiveness of such notice was considered by one of us (TSSJ) while hearing W.P.Nos.21193 to 21195 of 2017, dated 16.08.2017 in the case of TJSV Steel Fabrication and Galvanising (India) Pvt. Ltd., vs. Assistant Commissioner (CT), Udumalpet North Circle. In the said case also, the Assessing Officer granted 15 days time to the dealer to submit his objection also to avail an opportunity of personal hearing. It was held in the said writ petitions that the notice dose not satisfy the principles of natural justice because the opportunity of personal hearing should be afforded after the objections are considered by the Assessing Officer and prima facie, if the Assessing Officer is not in agreement with the objections, then he will have to hear the dealer, who will be entitled to place documents and also explain the facts and circumstances. Therefore, it was held that the opportunity of personal hearing, at that stage, would be an effective opportunity and not when in the pre-revision notice itself, it is communicated that an opportunity of personal hearing is available. It was so held taking note of the fact that there may be cases where on objections *being received to the revision notice, the Assessing Officer may agree with the dealer and drop the revision proceedings. Though this may be a rare phenomena, yet it cannot be said that it will never occur. Therefore, we are of the view that the first pre-revision notice does not satisfy the principles of natural justice."*

Therefore, the affording personal hearing is a statutory opportunity granted to the petitioner. Therefore, the respondents have clearly erred in not granting personal hearing to the petitioner.

4.Therefore, this Court is inclined to set aside the impugned orders challenged in all the writ petitions and accordingly, the impugned orders in W.P(MD)Nos.23450 to 23452 of 2023 are quashed and the matter is remitted back to the authorities. The authorities are strictly directed to grant personal hearing to the petitioners and thereafter pass orders. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. With the above said observation, the writ petitions in W.P(MD)Nos.23450 to 23452 of 2023 are allowed.

5. The assessment orders are challenged in W.P(MD)Nos. 23450 to 23452 of 2023 and this Court has allowed all the writ petitions. In writ petitions W.P.(MD)Nos.23440, 23442 and 23443 of 2023 the revision orders are challenged. Since assessment orders are quashed, it is not necessary to quash the orders passed in the revision petitions. Hence, the writ petitions in W.P(MD)Nos.23450 to 23452 of 2023 are allowed and the writ petitions in W.P.(MD)Nos.23440, 23442 and 23443 of 2023 are closed. No costs. Consequently, connected miscellaneous petitions are closed.

26.09.2023

Index:Yes/No
Internet:Yes/No
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S. SRIMATHY, J.,

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W.P(MD) Nos.23440, 23442, 23443,
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