BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.12.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)Nos.2207 & 2208 of 2024
WMP(MD) Nos.2216,2217,2219 & 2220 of 2024

M/s.P.R.Papers
Represented by its Proprietor,
Tmt.M.Jesline Jeneetha
W/o Robinson,
No.14A, Victoria Press Road,
Nagercoil – 629 001. Petitioner in both WPs

Vs

The Deputy State Tax Officer -2,
Nagercoil – 2 Assessment Circle,
O/o the State Tax officer,
Nagercoil -1 Assessment Circle,
131, Mead Street,
Nagercoil – 629 001,
Kanyakumari District. Respondent in both WPs

COMMON PRAYER:- Writ Petitions filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records in pursuant to the impugned orders passed by the respondent in Proceedings GSTIN:

33AQTPJ4889R1ZL/2017-2018 and GSTIN:33AQTPJ4889R1ZL/2018-2019 dated 19.09.2023 and quash the same and consequently direct the respondent to reopen the issue and affording opportunity of personal hearing to the petitioner and to adduce opportunity of personal hearing to the petitioner and to adduce evidence and to produce documents.

For Petitioner : Mr.M.Saravanakumar
For Respondent : Mr.A.Baskaran
Additional Government Pleader
(In both WPs)

COMMON ORDER

These writ petitions have been filed challenging the assessment orders passed by the Deputy State Tax Officer -2, Nagercoil –2 Assessment Circle, Kanyakumari as against the petitioner Company for the assessment years 2017-2018 and 2018-2019.

2.Since in both these writ petitions, the petitioner Company is one and the same and the issue is pertaining to the assessment orders of different years, these writ petitions are disposed of by this common order.

3.The petitioner is the proprietor of "P.R.Papers", doing retail business dealing with A4 paper, paper board, files, carbon papers, writing and printing papers. The petitioner's Firm was registered under the GST Act, 2017. The respondent has conducted an inspection in the petitioner's premises on 23.09.2022 and 24.09.2022 and found some discrepancies, for which, a show cause notice was issued to the petitioner on 23.06.2023 fixing personal hearing on 30.06.2023. Since the notice was received by the petitioner belatedly, another show cause notice, dated 28.07.2023 fixing the personal hearing on 07.08.2023 was issued to the petitioner. According to the petitioner, she was suffered with cancer and hence she could not attend the enquiry on the dates fixed by the respondents. Finally, the respondent has fixed the personal hearing on 07.09.2023 and on that the petitioner appeared before the respondent with the relevant documents. However, the concerned officer was on leave on that day. Thereafter, the order impugned in this writ petition has been passed without providing an opportunity to the petitioner. Therefore, the petitioner has submitted a representation on 21.11.2023 with a request to withdraw the exparte order and to provide personal hearing to the petitioner to defend her case and the same was not considered. Hence, this petition.

4.Mr.A.Baskaran, Additional Government Pleader, who takes notice for the respondent submits that the petitioner was issued with the show cause notices, dated 23.06.2023 and 28.07.2023 providing sufficient opportunities of personal hearing on 30.06.2023 and on 07.08.2023. However, the petitioner failed to appear on those days. The concerned Officer, who is present before this Court submits that on the date of final personal hearing fixed on 07.09.2023, the officer was absent. Thereafter, the impugned orders came to be passed.

5.This Court considered the rival submissions made and also perused the materials placed on record.

6.The Joint Commissioner, Tirunelveli Division has conducted a surprise inspection under Section 67 of GST Act, 2017 in the premises of the petitioner on 23.09.2022 and noticed certain discrepancies. Thereafter, notice in Form DRC-01A was issued on 21.02.2023. The petitioner has replied to the above notice on 15.03.2023 and 18.04.2023. Thereafter, another notice in Form DRC-01 was issued to the petitioner on 04.05.2023. By referring these two notices, the petitioner was further issued with the personal hearing notices on 23.06.2023 and 28.07.2023 fixing personal hearing on 30.06.2023 and 07.08.2023. The petitioner claims that due to her ill-health, she could not attend the enquiry on the dates fixed by the respondent. However, she appeared on final personal hearing fixed on 07.09.2023 and on that day, the officer was absent and the same is agreed by the officer, who is present before this Court today. The petitioner has submitted a representation on 21.11.2023, wherein, a request for personal hearing was made. However, without considering the same, the impugned orders have been passed. As per Section 75 (4) of GST Act, 2017, an opportunity of personal hearing shall be granted to the petitioner, where a request is made, which reads as under:-

> "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."

7.A perusal of the petitioner's representation, dated 21.11.2023 shows that the petitioner has made a request for one more opportunity of personal hearing. However, it appears that the same was not considered by the respondent. This Court, by relying upon the provision under Section 75(4) of the GST Act, 2017 in WP

Nos.4105, 4110 and 4108 of 2023, dated 13.02.2023 has held that the respondents ought to have provided an opportunity of personal hearing, if they contemplated an adverse decision as against the assessee even when no request for personal hearing was made by the assessee. The relevant paragraphs are extracted as under:-

> *"6.In fact in a decision rendered by a learned Single Judge of this Court on 31.08.2020 in W.P(MD) Nos. 8133 of 2020, etc., batch, while interpreting Section 75(4) of the TNGST Act, 2017, it has been observed that only after a reply is sent by the assessee, the Authority can apply its mind and if they contemplate an adverse decision they must provide an opportunity of hearing. Learned Single Judge has also observed that issuing a personal hearing notice even prior to the receipt of the explanation from the petitioner cannot be said to be in compliance of Section 75(4) of the TNGST Act, 2017.*
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> *7.For the foregoing reasons, this Court is of the considered view that the principles of natural justice has been violated by the respondent before passing of*

the impugned assessment order for the following reasons:-

a) No reasons have been given by the respondent for rejecting the petitioner's objections raised in the replies all dated 19.10.2022;

b) Personal hearing was afforded to the petitioner even before the replies were received by the respondent;

c) They are non-speaking orders.

8.Only after receipt of the reply and only in cases where the respondent contemplates an adverse decision against the petitioner, a personal hearing will have to be granted and not before a reply is received from the petitioner, that too when the reply has been duly acknowledged in that impugned orders.

9.In the result, the impugned assessment orders all dated 25.10.2022 are hereby quashed and the matters are remanded back to the respondent for fresh consideration on merits and in accordance with law. The respondent shall pass final orders within a period of twelve weeks from the date of receipt of a copy of this order, after adhering to the principles of natural justice *and after affording a personal hearing to the petitioner."*

Here, in the present case on hand, the petitioner has submitted a representation on 21.11.2023 with a request to provide one more opportunity.

8.In view of the above and in the light of the decision taken by this Court in WP Nos.4105, 4110 and 4108 of 2023, dated 13.02.2023, the orders impugned in these writ petitions are hereby set aside. The issue is remanded back to the respondent for fresh consideration. The petitioner shall appear before the respondent for personal hearing on 26.02.2024, without expecting any separate notice from the respondent. The respondent shall take a decision after providing an opportunity of personal hearing to the petitioner within a period of four weeks from thereon.

9.Accordingly, these writ petitions are allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

13.02.2024

NCC:Yes/No
Index:Yes/No
Internet:Yes
vrn

__**Note:**__ Issue order copy on **19.02.2024**

To

The Deputy State Tax Officer -2,
Nagercoil – 2 Assessment Circle,
O/o the State Tax officer,
Nagercoil -1 Assessment Circle,
131, Mead Street,
Nagercoil – 629 001,
Kanyakumari District.

B.PUGALENDHI, J.

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Common Order made in
W.P(MD)Nos.2207 & 2208 of 2024
WMP(MD) Nos.2216,2217,2219 & 2220 of 2024

13.02.2024