

Granting short period of time for filing reply violates the legal right of assessee

The Hon'ble Madras High Court in the case ***M/s Health and Allied Insurance Company Ltd. v. the Commissioner of State Tax, Chennai [W.P. No. 30494 of 2023 dated October 20, 2023]*** allowed the writ petition and held that, the granting short period of time to file reply would not amount to the fair opportunity of hearing to assessee, as the contravention of the said principle would lead to the violation of the legal right of the assessee to defend during the adjudication proceeding.

Facts:

M/s Star Health and Allied Insurance Company Ltd. (**"the Petitioner"**) was issued a Notice by the Revenue Department (**"the Respondent"**) to which the Petitioner filed a reply. The Petitioner without taking into consideration the reply filed, issued a Show Cause Notice dated April 21, 2023 (**"the Impugned SCN"**) (First Hearing). The Petitioner was issued a notice (Second Hearing) for personal hearing on June 20, 2023. The Petitioner was issued another notice dated June 21, 2023 (Third Hearing) for personal hearing and further fixed the hearing on June 23, 2023 for the production of documents relied upon by the Petitioner in the reply filed. The Petitioner requested some time for furnishing the documents. However, the Respondent rejected the Petitioner's request on the ground that three hearing opportunities have already been granted and passed Assessment Order dated June 29, 2023 (**"Impugned Order"**)

Aggrieved by the Impugned SCN and Impugned Order, the Petitioner filed a writ petition before the Hon'ble Madras High Court on the ground that Impugned SCN was issued without taking into consideration the reply filed by the Petitioner and the Petitioner was not granted a fair opportunity by the Respondent by granting short period of time for filing reply, thereby violating the principles of natural justice.

Issue:

Whether the Respondent granting short period of time to file reply would amount to fair opportunity of hearing to assessee?

Held:

The Hon'ble Madras High Court in the case of ***W.P. No. 30494 of 2023*** held as under:

- Observed that, no notice was served in physical mode as the notice was uploaded through online mode only. The Petitioner was granted limited time for filing of reply which cannot be considered a fair opportunity of hearing.
- Noted that, the Petitioner should not be directed to file the reply within a short period of 2 days as it would violate the object of the provisions of fair opportunity to the assessee and would lead to depriving the legal right of the Petitioner to defend.
- Opined that, the Impugned Order is untenable on the ground that the Impugned Order is a non-speaking order and violates the principles of natural justice. Hence, the Court is inclined to set aside the Impugned Order.
- Held that, the Impugned Order is set aside and the matter is remanded back to the Respondent for fresh consideration. Hence, the writ petition is allowed.
- Directed that, the Respondent shall grant the Petitioner one more opportunity for personal hearing to the Petitioner and Petitioner shall file the reply along with all the documents required by the Respondent and thereafter, the Respondent shall peruse the documents and after conducting the full-fledged hearing, the Petitioner shall pass fresh assessment orders, which shall be a speaking order, touching upon all the issues raised by the Petitioner.

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