IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.07.2015

CORAM

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.A.Nos.959 and 960 of 2015
and
M.P.Nos.1 and 1 of 2015

Tvl Vivek Limited,
represented by its Vice President,
(Finance & Corporate Affairs)
Thiru B.K.Anand
No.133, Royapettah High Road,
Chennai-600 004. ... Appellant in both writ appeals/Petitioner

Vs.

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
No.46,Pasumpon Muthuramalingam Salai,
Chennai-600 028. ... Respondent in both writ appeals/Respondent

Both these writ appeals are preferred under Clause 15 of the Letters Patent against the order of this court dated 11.06.2015 made in W.P.Nos.30327 and 30328 of 2014.

Writ of Certiorari, to call for the records in respect of the Revised Assessment order TIN 33530801214 / 2009-10 and 2010-11 dated 30.09.2014 passed by the respondent in respect of the assessment years 2009-10 and 2010-11 under the Tamil Nadu Value Added Tax Act 2006 and the consequent demand notice dated 30.09.2014 as well as the consequent notice of attachment dated 14.11.2014 both issued by the respondent and quash the same.

For Appellant : Mr.Satish Parasaran in both W.As

For Respondent : Mr.A.N.R.Jayaprathap, GA(T)
in both W.As.

COMMON JUDGMENT

(Judgment of the Court was made by SATISH K. AGNIHOTRI, J.)

Both appeals arise from the common order dated 11th June, 2015 passed in W.P.Nos.30327 and 30328 of 2014, involving common question of law and facts, except the difference in assessment years, in case of W.A.No.959 of 2015, the relevant assessment year is 2009-10 and in case of other appeal, the relevant assessment year is 2010-11.

2. The writ petitioner is the appellant before us. Questioning the legality and validity of the revised assessment orders in TIN 33530801214 /2009-10 ad 2010-11 dated 30th September, 2014 passed by the respondent in respect of the assessment years 2009-10 and 2010-11 under the Tamil Nadu Value Added Tax Act, 2006 (herein-after referred to as "VAT Act") and the consequential demand notices dated 30th September, 2014 as well as the attachment notices dated 14th November, 2014, the appellant had preferred the writ petitions seeking for quashment of the said notices.

3. The brief facts in nutshell are that final assessment orders dated 30th March 2012 were passed for both assessment years on total and taxable turnovers of Rs.292,79,98,292/- and Rs.278,79,12,538/- and Rs.311,54,80,356/- and Rs.300,13,54,408/- respectively under the VAT Act. Subsequently, notices dated 23rd July, 2012 and 20th September, 2012, proposing to revise the aforestated assessments by disallowing the exemption were issued calling upon the appellant / writ petitioner for objections. There is no dispute that objections pursuant to the said notices, were submitted, vide letters dated 20th August, 2012, 10th October, 2012 and 13th March 2013, regarding sales return unfructified sales for the years 2009-10 and 2010-11.

4. In the said objections, it was specifically stated that in the event of the explanation submitted by the assessee is found unsatisfactory, the assessee may be given an opportunity to produce further documentary evidence and details. According to the learned counsel for the appellant-assessee, the impugned orders were passed without affording an opportunity of hearing to the appellant-assessee to produce relevant documents in support of the claim of the appellant. Being aggrieved, the appellant / writ petitioner has preferred the instant writ petitions, raising the ground of violation of principles of natural justice and also that relevant materials were not considered, as per law and on its own merit.

5. The respondent appeared before the writ court and vehemently opposed the submission with regard to violation of principles of natural justice, stating that the appellant / assessee was given full opportunity to file objections. It was further contended that the appellant-assessee ought to have produced all relevant materials along with objections, which the assessee had miserably failed and as such, there was no infraction of principles of natural justice.

6. The learned Single Judge, considering all aspects of the matter, dismissed the writ petitions. Thus, the assessee is before us by way of the instant appeals.

7. Mr.Satish Parasaran, learned counsel appearing for the appellant would contend that under the provisions of Section 22 of the VAT Act, the assessment is required to be done on the basis of returns filed in the prescribed form by the dealer. The format of return is prescribed under Rule 7 of the Tamil Nadu Value Added Tax Rules, 2007 in Form-I. In the said format, there is no requirement or scope for furnishing supporting documents, such as debit notes and also proof for movement back of goods. The appellant-assessee has specifically stated in the objection that in the event the assessing authority is unsatisfied with the objections / explanations, the assessee may be given an opportunity to produce relevant documentary proof, which was not done. Thus, the finding that there was no violation of principle of natural justice is contrary to the facts on record and also against the well settled principles of law.

8. Pursuant to the notice, the respondent appeared through Mr.A.N.R.Jayaprathap, learned Government Advocate and submitted that in such a situation, the appellant-assessee may be given an opportunity to produce relevant documentary proof and also other evidence within a period of one week. Thereafter, a fresh assessment order will be passed.

9. Heard the learned counsel appearing for the parties and perused the pleadings and documents appended thereto.

10. There is no dispute that the appellant-assessee was not given any opportunity to produce documentary proof when it was specifically stated in the objection that in the event of any doubt, the assessee be given an opportunity to produce documentary proof in support of the claim of exemption made in the returns as well as in the objections filed subsequently.

11. In such view of the matter, we have no hesitation to hold that the appellant-assessee was not given proper opportunity to place its case for exemption on the basis of necessary relevant documentary proofs. Accordingly, the impugned revised assessment orders dated 30th September, 2014 and the consequent demand notices dated 30th September, 2014 and also the notices of attachment dated 14th November, 2014 are set aside. The appellant-assessee is granted two weeks time from today to produce all necessary documentary proof and other relevant materials to establish its claim for exemption before the assessing authority. Thereafter, on completion of two weeks, it will be open to the assessing officer to pass final assessment order, as per law and on its own merit.

12. For the reasons mentioned herein-above, we set aside the impugned order dated 11th June, 2015 rendered by the learned Single Judge in the writ petitions.

13. Resultantly, both writ appeals stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

vvk

To

The Assistant Commissioner (CT),
Mandaveli Assessment Circle,
No.46,Pasumpon Muthuramalingam Salai,
Chennai-600 028.

+1cc to Mr.Sathish Parasaran, Advocate, S.R.No.36797
+1cc to the Special Government Pleader(Taxes), S.R.No.36844

W.A.Nos.959 and 960 of 2015

RV(CO)
CA(23/07/2015)