IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2015

Coram

The Hon'ble Mr. Justice T.RAJA

W.P.Nos.12758 to 12760 of 2015
and
M.P.Nos.1, 1 and 1 of 2015

Sri Thirumalai Traders rep. By its Proprietor N.Rajendiran .. Petitioner in all the W.Ps

Vs.

The Commercial Tax Officer (Main), Kallakurichi, Villupuram District. .. Respondent in all the W.Ps

Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned orders passed in TIN Nos.33714781413/2011-12 and 33714781413/2012-13 dated 05.12.2014 and TIN No.33714781413/2013-14 dated 11.10.2014 on the file of the respondent and quash the same as illegal, arbitrary and against the principles of natural justice and direct the respondent to assess the petitioner as per Section 27(1)(a) of the TNVAT Act in accordance with law.

For Petitioner .. Mr.A.Thiyagarajan, Sr. Counsel for Mr.S.Ramesh Kumar in all the W.Ps

For Respondent .. Mr.Manoharan Sundaram, Addl. Govt. Pleader (T) in all the W.Ps

COMMON ORDER

These three writ petitions are directed against the impugned orders passed by the Commercial Tax Officer (Main), Kallakurichi, Villupuram confirming the proposals and finally determining the total and taxable turnover under revision of assessment under Section 27(1)(a) of the TNVAT Act for the years 2011-2012, 2012-2013 and 2013-2014.

2.Learned senior counsel appearing for the petitioner would submit that the petitioner is a registered dealer in fertilizers and pesticides under the TNVAT Act. The petitioner reported a total taxable turnover of Rs.15,42,810/-, Rs.16,02,100/- and Rs.22,12,134/- for the years 2011-2012, 2012-2013 and 2013-2014 respectively. The said assessment is deemed to have been completed as per Section 22(2) of the TNVAT Act as there was no notice on or before 31.10.2014. However, when the respondent issued notices on 26.09.2014, 16.10.2014 and 16.10.2014 alleging that the purchase turnover of Rs.33,89,685/-, Rs.37,47,511/- and Rs.17,21,921/- respectively effected from India Cements Limited and a turnover of Rs.32,60,508/- and Rs.22,42,701/- purchased from Madras Fertilizers Limited was not reported, as a result, the respondent proposed to levy penalty under Section 22(5) of the TNVAT Act. The petitioner, after receipt of the notices with same contents on 10.11.2014, appeared before the respondent on 30.10.2014 and on 01.12.2014 and submitted a detailed objection with a request to afford personal hearing. But the impugned orders, without reference to his request and his appearance made on 30.10.2014 and 01.12.2014, wrongly indicated that the petitioner failed to appear and also refused to file his objection. The learned senior counsel also brought to the notice of this Court the proof of appearance of the petitioner before the respondent on 30.10.2014 and 01.12.2014 and also the submission of his objection.

3.Mr.Manohar Sundaram, learned Additional Government Pleader (T) takes notice for the respondent. The learned Additional Government Pleader (T) is unable to answer the aforesaid specific contention of the petitioner that even after the appearance of the petitioner before the respondent and submission of his objection, the respondent had passed erroneous orders reflecting non-application of mind.

4.When the petitioner had appeared before the respondent and also filed his objection, this Court is unable to find any justification to hold against the petitioner that he had failed to appear and submit his explanation. Therefore, this Court, prima facie being satisfied that the orders impugned are reflecting non-application of mind of the respondent, has no other option except to set aside the same. Accordingly, the impugned orders passed in TIN Nos.33714781413/2011-12 and 33714781413/2012-13 dated 05.12.2014 and TIN No.33714781413/2013-14 dated 11.10.2014 are set aside with a direction to the respondent to afford an opportunity of personal hearing to the petitioner and consider his case along with the objection filed on 01.12.2014 and pass final orders on merits and in accordance with law.

5.With the above direction, these writ petitions shall stand allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mmi

To

The Commercial Tax Officer (Main),
Kallakurichi, Villupuram District.

+ 1 cc to M/s. S. Ramesh Kumar, Advocate SR.23888

+ 1 cc Government Pleader Sr.23608

(CO)
EU .04.2015

W.P.Nos.12758 to
12760 of 2015

MP(CO)
Eu 21.05.2015