IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.04.2015

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P. NOs. 13446, 13447 and 13448 of 2015
and
M.P.Nos.1,1 and 1 of 2015

Sattar Sanitary Stores,
Rep by its Proprietor ..Petitioner in all WPs

-vs-

The Assistant Commissioner (CT)
Broadway Assessment Circle,
[Formerly Harbour-IV Assessment Circle]
Chennai 600 001 .. Respondent in all WPs

PRAYER in all Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondent in TIN Nos. 33760060735/2007-08, 33760060735/2008-09, 33760060735/2009-10 dated 27.03.2015 and to quash the same as illegal, unconstitutional and to direct the respondent to pass fresh orders after considering the objections filed by the petitioner.

For petitioner in all WPs : Mr.A.Ravichandran
For respondent in all WPs : Mr.V.Haribabu, AGP (T)

C O M M O N O R D E R

There are three writ petitions, filed by M/s.Sattar Sanitary Stores, represented by its Proprietor challenging the impugned orders dated 27.03.2015 passed by the Assistant Commissioner (CT), Broadway Assessment Circle. Learned counsel appearing for the petitioner would submit that the petitioners are dealers in Sanitary Wares and Tile Fittings, registered under TNVAT Act bearing TIN 33760060735. They have been filing their monthly returns under the TNVAT Act and have been paying their taxes promptly without any delay. Whileso, a notice dated 05.11.2009 was received by the petitioner stating that based on the audit conducted by the Enforcement wing official from 29.09.2009 to 15.10.2009, there are certain discrepancies and objections were called for.

2. Learned counsel appearing for the petitioner would further submit that in response to the said notice dated 05.11.2009, the petitioner had issued a para wise objections by his undated representations. Although his representation was undated, the same has been acknowledged by the respondent in the impugned order, challenged herein. In this context, the grievance of the petitioner is, when he has submitted a detailed representation, of course un-dated, having acknowledged the receipt of the reply from the dealer, it is not open to the respondent to say that for the notices dated 05.11.2009, the petitioner has not submitted his objections. Since the respondent in the impugned order has wrongly mentioned that the petitioner has not filed his objections till date, that itself clearly shows that they have passed the impugned order deliberately ignoring the detailed explanations given. On this short point, he prayed for setting aside the impugned order, directing the respondent to afford a reasonable opportunity.

3. Mr. V. Haribabu, learned Additional Government Pleader (Taxes) takes notice for the respondents and submitted that when the proposals are confirmed by the respondent, finally determining and re-fixing the total taxable turn over of the dealer, he has no option except to pay the penalty issued against him under Section 27(3) and 27(4) with the reversed ITC.

4. But this Court, having seen the petitioner's undated reply filed to the notice dated 05.11.2009, having been acknowledged in the impugned order, the respondent ought not to have proceeded to pass the final impugned order holding that the petitioner has not filed his objections till date. The approach in overlooking the objection dated Nil, made by the petitioner to the notice dated 05.11.2009 needs a re-look of his case.

5. Therefore, the impugned order is set aside on a limited score and the matter is remanded back to the respondent, to consider the representation dated Nil and he is further directed to give an opportunity of personal hearing and thereupon pass orders on merits.

6. With this direction, all the writ petitions are disposed of. Consequently, the connected M.Ps are closed. No order as to costs.

avr

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

The Assistant Commissioner (CT)
Broadway Assessment Circle,
[Formerly Harbour-IV Assessment Circle]
Chennai 600 001

+ 1 cc to Mr.A.Ravichandran, Advocate SR 24191

rj(co)
prk15/5

W.P. NOs. 13446,13447 and 13448 of 2015 and M.P. Nos. 1,1 and 1 of 2015