IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.06.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.13628 and 13629 of 2015
and
M.P.Nos.1 and 1 of 2015

M/s. Diwan Power Solutions,
Rep. by its Partner,
No.15/6, G.N.T.Road,
Moolakkadai, Chennai - 600 118. ... Petitioner in both W.Ps.

.. Vs ..

The Assistant Commissioner (CT),
Kodungaiyur Assessment Circle, Chennai. ... Respondent in both W.Ps.

Prayer in both W.Ps. Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for the impugned proceedings of the respondent in TIN/33661352539/2012-2013 and TIN/33661352539/2013-2014 respectively dated 27.02.2015 and quash the same as passed in violation of principles of natural justice, contrary to Sub-Item 27 of Entry 68 of Part B of the First Schedule to the TNVAT Act and also law laid down by the Division Bench of this Court in W.P.No.4042/2008 and batch of cases in the cases filed by M/s.Canon India Private Ltd., and others.

In both W.Ps.
For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.S.Kanmani Annamalai,
Additional Government Pleader (T)

COMMON ORDER

These two writ petitions are filed by the petitioner challenging the impugned orders inter alia that without even serving notice, the respondent went wrong in passing the impugned orders. Therefore, the same, being violative of principles of natural justice, are liable to be interfered with.

2. Adding further, the learned counsel appearing for the petitioner would submit that the respondent has committed yet another error in levying penalty under Section 27 of the Tamil Nadu Value Added Tax Act, 2006 [hereinafter referred to as the TNVAT Act], inasmuch as, in a case of assessment made under Section 27 (1) (b) of the TNVAT Act, penalty cannot be levied at all. Therefore, the penalty is neither attracted under Section 27 (3) of the TNVAT Act nor under Section 27(4) of the TNVAT Act.

3. Learned Additional Government Pleader appearing for the respondent, on posing a question as to whether the service of notice on the petitioner has been properly effected, has replied that only affixture of notice has been made, but the notice has not been served. This clearly shows that the respondent has rushed to pass the impugned orders, violating the principles of natural justice.

4. Therefore, this Court, accepting the case of the petitioner that the impugned orders are passed without serving any notice on the petitioner, is inclined to set aside the impugned proceedings of the respondent in TIN/33661352539/2012-2013 and TIN/33661352539/2013-2014 respectively dated 27.02.2015. Accordingly, the impugned orders are set aside and both these writ petitions stand allowed and the matters are remitted back to the file of the respondent and the Assessing Officer is directed to reconsider the same on merits and in accordance with law, after giving personal hearing to the petitioner. After receiving notice, it is open to the petitioner to file proper objections. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CO)

/true copy/
Sub Asst. Registrar

Jrl

To

The Assistant Commissioner (CT),
Kodungaiyur Assessment Circle, Chennai.

1 cc to Mr.P.Rajkumar, Advocate, Sr. 26739

1 cc to Spl.Government Pleader (TAxes), Sr. 26467

W.P.Nos.13628 & 13629 of 2015

MSM (CO)
kk 29/6