IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.06.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.15481 and 15482 of 2015
and
M.P.Nos.1 of 2015

M/s.Sekar Machinery and Electricals
Rep. by its Proprietor
No.176, RCS Main Road
Natrampalli-635 852. [Petitioner in both petitions]

Vs

The Commercial Tax Officer
Thiruppattur
Vellore District. [Respondent in both petitions]

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the respondent in his proceedings in TIN No.33744620910/ 2009-2010 and 2010-2011 respectively dated 29.4.2015 and quash the orders passed therein and to direct the respondent to consider the replies filed on 15.4.2015 and pass revised orders under Section 3(4) of the TNVAT Act 2006 after providing an opportunity of personal hearing to the petitioner.

For petitioner : Mr.C.Baktha Sironmoni

For respondent : Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) for the respondent.

2. These two writ petitions have been filed under Article 226

of the Constitution of India, challenging the orders of the respondent dated 29.4.2015 and to direct the respondent to consider the replies filed on 15.4.2015 and pass revised orders under Section 3(4) of the Tamil Value Added Tax Act, 2006, (hereinafter referred to as "2006 Act"), after providing an opportunity of personal hearing to the petitioner.

3. The learned counsel for the petitioner would submit that the impugned orders passed by the respondent are contrary to law, since the respondent has specifically stated that no reply was filed by the petitioner for the notices issued on 01.04.2015, when the petitioner has immediately filed replied to the notices on 15.04.2015, raising all the points clearing the doubts of the Assessing Officer. Further, he submitted that when the replies given by the petitioner clearly show that the total sales of the petitioner is as per monthly K returns filed for 2009-2010 and 2010-2011 and therefore the concessional rate of tax availed by them under Section 3(4) of the 2006 Act and the taxable turnover has not exceeded Rs.50 lakhs during 2010-2011, the Assessing Authority ought not to have disallowed the concessional rate of tax under Section 3(4) of the Act.

4. In reply to the above, Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondent also tried to support the impugned orders by stating that the petitioner had not handed over a copy of the replies to the Assessing Officer who has passed the order, as a result, the Assessing Officer had passed the impugned orders, but this Court fully disagrees with the said contention. Indeed, the petitioner, in response to the notices dated 01.04.2015, had sent replies on 15.04.2015. From a perusal of the said replies clearly, it is crystal clear that several points have been taken, more particularly, the petitioner has mentioned that the annual turnover has not exceeded Rs.50 lakhs and the purchase is only within the State of Tamil Nadu from Registered Dealer and there is no interstate purchase and hence they were eligible to file returns in Form K and also he further mentioned that they have not collected any tax on sales effected by them. Furthermore, the endorsements made by the office of the respondent clearly show that the replies have been filed by the petitioner. Therefore, it is not open to the respondent to say that the petitioner has not filed replies.

5. In view thereof, this Court is of the considered opinion that the respondent has not applied his mind while passing the impugned orders. Therefore, the impugned orders are unsustainable, accordingly they are set aside.

6. Hence, while setting aside the impugned orders dated 29.04.2015, the matters are remanded to the respondent to pass appropriate orders on merits and in accordance with law, by considering all the points, after giving an opportunity of personal hearing to the petitioner.

7. In the result, the writ petitions are allowed. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Thiruppattur,
Vellore District.

1 CC to Mr.C.Baktha Sironmoni, Advocate SR.No. 26387

1 CC to the Government Pleader, SR.No. 26469

W.P.15481 and 15482 of 2015

AD (CO)
PSI (22.06.2015)