IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.12.2015

CORAM

THE HON'BLE MR.JUSTICE R.MAHADEVAN

WRIT PETITION NOS.16278 TO 16280 OF 2015
AND
M.P.NOS.1,1,1,2,2 AND 2 OF 2015

M/s.Rajendra Sales Agencies,
rep. by its Proprietor,
Mr.Babulal,
No.4, Reddy Raman Street,
Chennai - 600 079. ... Petitioner in all W.Ps.

Vs.

1. The Assistant Commissioner (CT)
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai, II Floor,
Chennai - 600 001.

2. The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
Chennai ... Respondents 1 and 2 in all W.Ps.

Prayer in all W.Ps:-

Writ petitions filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus, to call for records of the first respondent in the impugned proceedings in TIN No.33700240606/2010-11, TIN No.33700240606/2011-12, and TIN No.33700240606/2012-13 respectively, dated 09.04.2015, and to quash the same as contrary to the provisions of TNVAT Act and against the principles of natural justice and further, to direct the first respondent to furnish invoice copies, mode of payment, movement of goods of third party and further to consider the reply, dated 17.11.2014, filed by the petitioner and to grant an opportunity to cross examine the dealers, whose records are relied on against the petitioner and thereafter pass an order in accordance with law.

For Petitioner	:	Mrs.C.Rekha Kumari
For Respondents	:	Mr.S.Manoharan Sundaram Additional Government Pleader

COMMON O R D E R

These Writ Petitions are filed for issuance of Writ of Certiorarified Mandamus, to quash the proceedings passed by the first respondent, viz., the revised orders,dated 09.04.2015, for the assessment years 2010-11, 2011-12 and 2012-13 respectively, and further, to direct the first respondent to furnish invoice copies, details related to mode of payment, movement of goods of third party and to consider the reply, dated 17.11.2014, filed by the petitioner and to grant an opportunity to cross examine the dealers, whose records are relied on against the petitioner.

2. As the issue involved in these Writ Petitions and the parties herein are one and the same, these Writ Petitions are taken up together, and disposed of vide this common order.

3. The petitioner-assessee is the registered dealer in the books of the respondent-Department. The first respondent-Assistant Commissioner, based on the monthly returns filed by the seller of the petitioner, (mentioned as annexure-II in the pre-revision notices) had issued pre-revision notices to the petitioner, under Section 27 (3) (c) of TNVAT Act, 2006, dated 30.05.2014, proposing to revise the assessment orders for the years 2010-11, 2011-12 and 2012-13, and also to levy penalty. The petitioner was granted 15 days' time to file objection to the aforesaid notices. On receipt of such notices, the petitioner filed their replies, dated 03.07.2014, negating the allegation levelled against them, and sought for certain documents, which formed the basis for issuance of such revision notices, so as to enable them to file their effective reply. Again, the petitioner was issued with pre-revision notices, dated 24.07.2014, reiterating the same set of allegations, but this time, by the second respondent. Thereafter, the first respondent. Thereafter, the first respondent, by notice, dated 05.11.2014, called upon the petitioner to appear before him, on or before 17.11.2014, failing which, final orders would be passed. Accordingly, the petitioner appeared before the first respondent, offered explanation, and filed objection together with supportive documents. Thereafter, the first respondent passed the impugned orders, dated 09.04.2015, wherein, no references were made with regard to the explanation given by the petitioner on the date of personal hearing and the reply filed by them, dated 17.11.2014. Aggrieved by the said impugned orders, the petitioner is before this Court, seeking to quash the same.

4. Learned counsel appearing for the petitioner has submitted that, the petitioner, vide their replies dated 03.07.2014, sought for certain documents, which formed the basis for issuance of pre-revision notices. But, the first

respondent, without furnishing the same, ought not to have confirmed the proposals made in the pre-revision notices. The learned counsel, in other words, submitted that when the petitioner is handicapped without being furnished the copies of the documents, based on which, revision proceedings were couched, they cannot be expected to file effective reply to defend their case. The learned counsel, therefore, submitted that the impugned orders are liable to be set aside.

5. The learned Additional Government Pleader (Tax) for respondents has submitted that the petitioner has suppressed the sales turnover for the assessment years 2010-11, 2011-12 and 2012-13, hence, pre-revision notices were issued, inviting objection, and after affording opportunity of personal hearing to the petitioner and considering the reply filed by them, the revised assessment orders came to be passed by the first respondent. The learned Additional Government Pleader, therefore, submitted that the impugned orders are wholly sustainable.

6. I am unable to accept the contentions of the learned Additional Government Pleader for respondents. When the petitioner, vide their replies, dated 03.07.2014, raised certain issues and also sought for certain documents, based on which, the pre-revision notices were issued, so as to enable them to file their effective objection/reply, the first respondent, without rendering any findings on those issues, cannot straightaway pass any assessment order, and such an order, cannot be construed as a speaking order. This Court, in umpteen number of cases held that, when certain issues are raised for consideration by the assessee, the authority concerned is expected to render findings on such issues and without doing so, he cannot pass any order.

7. Admittedly, in the cases on hand, it is seen that the petitioner had filed replies, raising certain issues before the first respondent to consider; appeared before him; produced the necessary documents in support of their claim, and gave explanation. When the records of third parties are relied, which have adverse consequences on the petitioner, as they have been saddled with huge tax liability, it is the bounden duty of the respondent to furnish those copies and documents relied, to the petitioner, so as to effectively defend their cases, whereas, the first respondent, without adverting to the same, passed the impugned orders, which according to this Court are unsustainable and non-speaking and liable to be set aside. Accordingly, the impugned orders, dated 09.04.2015 are set aside, and the first respondent is directed to provide the documents, relied on by him in issuing the revision notices, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such documents, the petitioner is

directed to file necessary objection/additional objection, if any, within a period of two weeks and the same shall be considered by the first respondent and necessary orders be passed after granting due opportunity of personal hearing to the petitioner within a period of six weeks thereafter. If the petitioner fails to avail the opportunity granted by this Court, it is open to the first respondent to proceed further in accordance with law, and shall pass the assessment order without granting any further adjournments.

8. With the above observations, the Writ Petitions are allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To
1. The Assistant Commissioner (CT)
Sowcarpet Assessment Circle,
No.48/39, Rajaji Salai, II Floor,
Chennai - 600 001.

2. The Commercial Tax Officer,
Sowcarpet-II Assessment Circle,
Chennai.

+ 3 cc to M/s. C.Rekha Kumari, Advocate SR.68199
+ 1 cc to Special Government Pleader Sr.68516

Writ Petition Nos.16278 to 16280 of 2015

VSN(CO)
EU 12.1.16