IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.06.2015

CORAM:

THE HONOURABLE Mr.JUSTICE.T.RAJA

W.P.Nos.16875 to 16880 of 2015
&
M.P.Nos.1 to 1 of 2015 (6 Mps)

Mallika Hardwares
No.206, Periyar Pathai
Choolaimedu, Chennai - 600 094
Rep. By:A.Sukumar - Proprietor ...Petitioner in all the WPs

Vs.

The Assistant Commissioner (CT)
M.M.D.A Colony Assessment Circle
No.10, Pallaniyappa Building
Greams Road, Chennai - 600 006 ...Respondent in all WPs

Writ petitions are filed under 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the records of the respondent in TIN 33311482954 / 2007-2008, TIN 33311482954 / 2008-2009, TIN 33311482954 / 2009-2010, TIN 33311482954 / 2010-2011, TIN 33311482954 / 2011-2012 and TIN 33311482954 / 2012-2013 and quash the order dated 31.03.2015 with a consequential direction to the respondent to redo the assessment considering the returns filed by the petitioner in Form K in accordance with law.

For Petitioner : Mr.Md.Ghafoor Ur Rahman

For Respondent : Mr.S.Kanmani Annamalai
Additional Govt. Pleader (Tax)

COMMON ORDER

These writ petitions have been filed by Mallika Hardwares challenging the impugned proceedings by the Assistant Commissioner (CT), M.M.D.A Colony, Assessment Circle in TIN 33311482954 / 2007-

2008, TIN 33311482954 / 2008-2009, TIN 33311482954 / 2009-2010, TIN 33311482954 / 2010-2011, TIN 33311482954 / 2011-2012 and TIN 33311482954 / 2012-2013 dated 31.03.2015 in and by which confirming the proposal to levy penalty under Sections 27(3) and 27(4) of the TANVAT Act, the Assistant Commissioner has held against the petitioner that they have not filed their reply nor submitted any records till the date of passing of the order.

2. Learned counsel appearing for the petitioner assailing the two reasons given by the Assistant Commissioner submitted that immediately on receipt of the notice dated 02.02.2015, the petitioner submitted a reply on 19.03.2015, wherein he has taken a specific stand that they were doing borewell business in and around Chennai area only and they have also enclosed copies of sales bills, purchase mills, sales ledger, purchase ledger, bank statement and sales and purchase abstract for verification of the respondent to prove that their sales turnover is below Rs.50,00,000/-. Further he would submit that the petitioner is a registered dealer on the file of the respondent carrying on small business in trading of Borewell, Motor Pumps and PVC Pipes and Fittings and they have declared the total and taxable turnover of Rs.15,10,868/- for the year 2007-2008, Rs.29,83,555/- for the year 2008-2009, Rs.42,81,772/- for the year 2009-2010, Rs.36,36,434/- for the year 2010-2011, Rs.47,70,883/- for the year 2011-2012, Rs.44,84,705/- for the year 2012-2013 by filing Form K monthly returns and also paying 0.5% under Section 3(4) of the TNVAT Act, 2006. While so, the enforcement officials conducted the inspection at their premises on 04.06.2014. During the course of inspection, considering the documents found in the premises, enforcement officials asked for production of purchase and sale bills and the copies of returns filed in Form K for verification. Since the proprietor was out of station on that particular date, it was not shown on the said date. However, on 13.06.2014, when the proprietor returned to Chennai, she appeared before the Enforcement Officials and her statement was also recorded clearly mentioning the sale turn over adopted at Rs.16,12,516/-, assessable at 4%, as against the actual sales turn over of Rs.15,10,868/- at 0.5% for the year 2007-2008, Rs.27,53,897/- assessable at 4% as against the actual sales turn over of Rs.29,83,555/- for the year 2008-2009, Rs.38,81,972/- assessable at 4% as against the actual sales turn over of Rs.42,81,772/- for the year 2009-2010, Rs.11,60,082/- assessable at 4% as against the actual sales turn over of Rs.36,36,434/- for the year 2010-2011, Rs.47,70,883/- assessable at 4% as against levy of 0.5% for the year 2011-2012, Rs.51,79,815/- assessable at 5% as against the actual sales turnover of Rs.44,84,705/- at 0.5% for the year 2012-2013 . However, the respondent again directed the petitioner to produce all the records. Once again the proprietor

appeared before the respondent on 25.06.2014 with books of accounts and copies of returns in Form K for verification, enclosing the copies of purchase and sales register, bank statement and sales and purchase abstract for verification in proof of actual reported sales turn over of Rs.15,10,868/- for the year 2007-2008, Rs.29,83,555/- for the year 2008-2009, Rs.42,81,772/- for the year 2009-2010, Rs.36,36,434/- for the year 2010-2011, Rs.47,70,883/- for the year 2011-2012, Rs.44,84,705/- for the year 2012-2013, which are below Rs.50,00,000/-. The same was also accepted by the respondent. Acknowledgment of the receipt of the said documents dated 25.06.2014 also clearly shows that the petitioner has produced all the required and relevant documents, namely purchase register, sales bill register, stock register and monthly returns filed to the Department for the purpose of dropping the notice. Overlooking all these important documents, the respondent has passed the impugned proceedings, which would clearly show that he has not applied his mind. The respondent has stated in the impugned proceedings that the petitioner has neither filed reply nor filed any documents. Therefore, the impugned orders are unsustainable in law, he pleaded. Concluding his arguments he would submit that before passing the impugned orders the respondent has not even afforded an opportunity of personal hearing and as a result, he has also violated the mandatory condition under Section 27(2) of the TNVAT Act, 2006, which says that no orders shall be passed without giving a reasonable opportunity to show cause against such order.

3. The learned Additional Government Pleader appearing for the respondent also, after going through the impugned orders, is unable to support the same when the learned counsel for the petitioner brought to the notice of this Court the reply filed by them on 19.03.2015 with acknowledgment issued by the respondent for the assessment years 2007-2008, 2008-2009, 2009-2010, 2010-2011, 2011-2012 and 2012-2013. Reading out to this Court that their sales turn over was below Rs.50,00,000/-, the learned Additional Government Pleader appearing for the respondent is unable to support the impugned order since there is no specific reason assigned by the Assessing Officer in the impugned assessment orders for confirming the proposal to levy penalty.

4. It is well settled legal position that the respondent Assessing Officer being a quasi-judicial authority has got bounden duty to apply his own mind and pass a speaking order. But in the present case, though the acknowledgment has been issued by the respondent for having filed the reply by the petitioner, holding against the petitioner that he has not filed any reply in writing or any document would clearly show non-application of mind on the part

of the Assessing Officer and the impugned orders are liable to be set aside on that ground alone.

5. In the result, the writ petitions are allowed and the impugned orders dated 31.03.2015 made in TIN 33311482954 / 2007-2008, TIN 33311482954 / 2008-2009, TIN 33311482954 / 2009-2010, TIN 33311482954 / 2010-2011, TIN 33311482954 / 2011-2012 and TIN 33311482954 / 2012-2013 are set aside. The respondent is directed to redo the exercise after affording the petitioner an opportunity of personal hearing. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

gpa

To

The Assistant Commissioner (CT)
M.M.D.A Colony Assessment Circle
No.10, Pallaniyappa Building
Greams Road, Chennai - 600 006

1 CC to Mr.Md.Ghafoor Ur Rahman, Advocate SR.No. 30733

1 CC to the Government Pleader (Tax), SR.No. 30849

W.P.Nos.16875 to 16880 of 2015&
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CNR (CO)
PSI (24.07.2015)