IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.17341 and 17342 of 2015
and M.P.Nos.1 of 2015

Tvl.Edelweiss Commodities Services Ltd.
rep by its Executive Vice President /
Authorised Signatory M.Shankar Raaman
"Lancor West Minister" 2nd floor
No.70/108 Dr.Radha Krishnan Salai
Mylapore Chennai 4 [Petitioner in both Petitions

Vs

1 Commercial Tax Officer
Thiruvallikeni Assessment Circle
No.48 Pasumpon Muthuramalingadevar Salai
Chennai 28

2 Commercial Tax Officer
Group II Enforcement (East) Chennai 6
[Respondents in both Petitions

PRAYER : The Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of certiorari, filed Mandamus to call for the impugned proceedings of the respondent in TIN / 33850743129 / 2012-13 and TIN 33850743129/2013-2014 dt 29.5.2015 and quash the same and direct the 1st respondent to redo the assessment after giving personal hearing

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.R.Sivaraman
For Respondents : Mr.V.Haribabu, AGP(T)

O R D E R

Heard Mr.P.S.Raman, learned Senior counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondents and with their consent, the main writ petitions are taken up for final disposal.

2. These two writ petitions are filed by Tvl.Edelweiss Commodities Services Ltd., represented by its Executive Vice President /Authorised Signatory M.Shankar Raaman, challenging the impugned orders passed by the Commercial Tax Officer, Thiruvallikeni Assessment Circle, Chennai, TIN / 33850743129 / 2012-13 and 2013014 respectively dated 29.05.2015.

3.1 Mr.P.S.Raman, learned Senior Counsel for the petitioner would submit that the impugned orders dated 29.05.2015 are not sustainable for the reason that the respondent had issued the same by committing an error apparent on the face of the record, inasmuch as violating the principles of natural justice in not giving personal hearing to the petitioner before confirming the proposal, which is mandatory.

3.2. Adding further, learned Senior Counsel for the petitioner submitted that even before the notices dated 30.03.2015 were issued calling upon the petitioner to file their objections, there was an inspection conducted by the Enforcement Wing Officials and the respondent has called for certain clarifications, for which, the petitioner, in their letter dated 13.04.2015, has requested the respondent to refer to their reply for defect No.10 as recorded in the sworn statement and they have also sought for an opportunity of personal hearing to produce F forms for Rs.37.37 crores. While that being the case, the learned Senior Counsel for the petitioner would submit that when a detailed reply was given on 29.01.2015, without giving a reasonable opportunity as sought for in their letter dated 13.04.2015, again committing yet another mistake in not considering the detailed reply, the respondent has wrongly passed the impugned orders.

3.3 Therefore, the learned Senior Counsel for the petitioner submitted that when the statute provides for grant of personal hearing and as has been held by this Court in the decision reported in 33 VST 333 (SRC Projects P. Ltd vs. CCT (Mad)), pursuant thereto a circular No.7/2014 dated 03.02.2014 has been issued by the Commissioner to the effect that it is the duty cast upon the Assessing Officer to give personal hearing, even though it is not asked for before passing final orders, when the petitioner, even before the receipt of notice has specifically asked for personal hearing to explain their case in detail, along with a request to consider their reply for defect No.10, ignoring the ratio laid down by this Court cited supra and also overlooking the detailed reply submitted by the petitioner, the impugned orders have been passed. Therefore, it is a fit case where the petitioner should be afforded with an opportunity of personal hearing to explain their case.

3.4. However, learned Senior Counsel for the petitioner fairly admitted before this Court that after the receipt of the notices dated 30.03.2015, the petitioner has not sent their reply/objection, but, according to him, it does not mean that the petitioner has not asked for personal hearing, when he has already submitted a written representation on 13.04.2015 seeking grant of personal hearing.

4. The learned Additional Government Pleader (Taxes) on the other hand submitted that the impugned order is an appealable order. Therefore, the petitioner cannot come to this Court sidestepping the statutory appeal provision. He also further submitted that when the notice was issued on 30.03.2015 calling upon the petitioner to submit his reply/detailed objection, and when the petitioner in the affidavit filed in support of the writ petition has also admitted that they have not filed any reply, it is a fit case where the petitioner should be directed to approach the appellate authority.

5. This Court has considered the submissions made by the learned counsel on either side and perused the materials available on record.

6. Although this Court finds some merit in the submission made by the learned Additional Government Pleader (Taxes) with regard to the admitted fact that the petitioner has remained silent even after receipt of the notice dated 30.03.2015, the petitioner, in their letter dated 13.04.2015 has mentioned two things viz., (1) the petitioner has requested the respondent to refer their reply for defect No.10 as recorded in sworn statement and (2) they have asked for personal hearing to produce the remaining F Forms for Rs.37.37 crores. When that was the request of the petitioner, the respondent, before passing the impugned order, as per the ratio laid down in the case of SRC Projects P. Ltd vs. CCT (Mad) reported in 33 VST 333, in my considered opinion, should have answered to the letter of the petitioner dated 13.04.2015. Admittedly, in the present case, pursuant to the request made by the petitioner dated 13.04.2015, no opportunity of personal hearing was given to the petitioner. Therefore, this Court, finds no impediment to remit the matter back to the Assessing Officer for passing fresh orders on merits and in accordance with law, after providing an opportunity of personal hearing to the petitioner.

7. In the result, the writ petitions are allowed and the impugned orders are set aside. The matterrs are remanded to the Assessing Officer for passing fresh orders. It is made clear that the petitioner is directed to submit their reply within a week's time from the date of receipt of a copy of this order and on receipt of the same, the respondent is directed to give an opportunity of personal hearing to the petitioner and thereafter pass orders afresh on merits and in accordance with law.

No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

1 Commercial Tax Officer
Thiruvallikeni Assessment Circle
No.48 Pasumpon Muthuramalingadevar Salai
Chennai 28

2 Commercial Tax Officer
Group II Enforcement (East) Chennai 6

+1 cc to Mr.R.Sivaraman vide sr.30730
+1 cc to special Government Pleader (Taxes) vide sr.30852

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aa13/07/2015