IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2015

Coram:

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.21908 to 21915 of 2015
and
M.P.Nos.1 of 2015

M/s.Murugan Hardwares
Represented by its Proprietor
RJ Complex A/74
Kovai Pudur Coimbatore 42 ... Petitioner in all Petitions

Vs

Assistant Commissioner
Commercial Taxes (FAC)
Perur Assessment Circle
Coimbatore 18 ... Respondent in all Petitions

PRAYER: Petitions filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records of the respondent relating to his proceedings bearing TIN 33741921885/2007-08 to 2014-15 respectively dt 26.4.2015 and quash the same.

For Petitioner : Mr.K.P.Narayanan
For Respondent : Mr.V.Haribabu
Additional Government Pleader(Taxes)

COMMON ORDER

Heard Mr.K.P.Narayanan, learned counsel for the petitioner and Mr.V.Haribabu, learned Government Advocate (Taxes), who took notice for the respondent and with their consent, the Writ Petitions are taken up for final disposal.

2. There are eight writ petitions challenging the eight assessment orders dated 26.04.2015 passed by the Assistant Commissioner(CT), (FAC) Perur Assessment Circle, with respect to assessment years 2007-08 to 2014-15 respectively on the ground that the respondent has failed to serve notices dated 05.01.2015 to the correct address of the petitioner before passing the impugned orders,

as a result, the respondent has failed to afford a reasonable opportunity to the petitioner.

3.1 Learned counsel for the petitioner would submit that the petitioner, being a registered dealer under the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as the TNVAT Act) on the file of the respondent, while engaged in the hardware business, they have been regularly filing their their returns including the VAT returns electronically. While so, the Enforcement Wing Officials, Coimbatore, took up the accounts of the petitioner for the financial years 2007-08 to 2014-15 from 15.09.2014 and completed the same on 14.10.2014 at their business premises, however, during the course of which, the Enforcement Officials found certain discrepancies in their calculation, for which, detailed explanation was given on 14.10.2014 itself, bringing to the notice of the Enforcement Officials that they procure materials from the local registered dealers after remitting tax under TNVAT Act and they are not liable to pay VAT since they sell cement and other materials below the purchase price and that apart, they have not collected any tax from their customers, who are the end users.

3.2 Adding further, learned counsel for the petitioner would submit that when the matter stood as above, all of a sudden, the impugned orders dated 26.04.2015 have been passed, neither issuing any prior notice nor affording an opportunity of personal hearing to the petitioner as contemplated under the TNVAT Act.

3.3. That apart, according to the learned counsel for the petitioner, when the petitioner is doing business regularly without changing the place, in the same address, it is not open to the respondent to state that they have issued notices dated 05.01.2015 to the address of the petitioner.

3.4 It is further argued by the learned counsel for the petitioner that when the respondent has come forward to invoke Section 27(3) of the TNVAT Act, by imposing penalty, they ought to have issued the notices, inviting the petitioner for personal hearing as per Section 27(2) of the TNVAT Act. But, as far as the case of the petitioner is concerned, even thereafter, the respondent has not complied with by issuing any other subsequent notice.

3.5 Concluding her argument, learned counsel for the petitioner would submit that this Court in W.P.No.2104 of 2015 dated 26.02.2015 (Tvl.Sri Prakash Automobiles rep. by its Proprietor T.Prakash vs. The Commercial Tax Officer, Pammal Assessment Circle, Chennai) has clearly and categorically held that the respondent has no jurisdiction to assess the tax based on the purchase value as they are liable to be taxed only on the sale value and therefore even on merits, the impugned orders are not sustainable.

4. It is at this point of time, Mr.V.Haribabu, learned Additional Government Pleader appearing for the respondent requested this Court not to go into the merits of the writ petitions, but to remand the matters to the Assessing Officer with a direction to reconsider the entire issue by giving a reasonable opportunity to the petitioner, since they complain that the respondent has not issued proper notice to them.

5. Considering the submissions made by the learned counsel on either side, without going into the merits of the writ petitions, on being satisfied that no notice whatsoever has been properly served on the petitioner nor an opportunity of personal hearing was afforded to the petitioner as per Section 27(2) of the TNVAT Act before passing the impugned orders, this Court is inclined to remand the matter to the respondent for fresh consideration and also in the light of the order passed by this Court in W.P.No.2104 of 2015 dated 26.02.2015 cited supra.

6. Accordingly, the writ petitions are allowed. The impugned orders dated 26.04.2015 are set aside and the matters are remanded to the respondent for fresh consideration. It is needless to mention that an opportunity of personal hearing shall be afforded to the petitioner before passing the final orders.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

rg Sub Assistant Registrar

To

Assistant Commissioner,
Commercial Taxes (FAC),
Perur Assessment Circle,
Coimbatore 18

+1cc to Mr.K.P.Narayanan, Advocate, S.R.No.38858
+1cc to the Special Government Pleader(Taxes), S.R.No.38332

W.P.Nos.21908 to 21915 of 2015

VSN(CO)
CA(12/08/2015)