IN THE HIGH COURT OF JUDICATURDE AT MADRAS

Dated: 29.01.2015

Coram

The Honourable Mr.Justice S.VAIDYANATHAN

W.P.Nos.1818 and 1819 of 2015
and
M.P.Nos.1 & 2 of 2015(in all)

B.Mahendra Kumar
Proprietor of Guru Rajendra Enterprises ... Petitioner in both the W.Ps.

vs.

Commercial Tax Officer,
Nethaji Road Circle,
Erode ... Respondent in both the W.Ps.

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari to call for the records relating to the order passed by the first respondent dated 17.12.2014 in TIN:33232882514 for the assessment years 2010-11 and 2013-14, respectively and quash the same as passed contrary to the provisions of the Tamil Nadu Value Added Tax Act, 2006 and also against the principles of natural justice.

For Petitioner : Mr.P.J.Rishikesh in both W.Ps

For respondent : Mr.V.Haribabu,A.G.P.(T) in both W.Ps.

COMMON ORDER

The petitioner has approached this Court contending that two notices have been received by him for the assessment years 2010-11 and 2013-14, determining the total and taxable turnover along with interest. In the notice for the assessment year 2010-11, the petitioner was given a time of 10 days to file his objections from the date of receipt of the notice and for the assessment year 2013-14, 15 days' time was granted.

2. The learned counsel for the petitioner submitted that the petitioner has made representation, dated 5.12.2014, seeking

extension of 20 days' time for filing objections and for producing the records and documents and the said letter was received by the Department on the very same day. Even without waiting for the 20 days time or without rejecting the request for extension of time, the impugned orders, dated 17.12.2014, have been passed. The learned counsel would further submit that the petitioner has also written a letter, dated 24.12.2014, seeking extension of time till 10.6.2015, without knowing the impugned orders. The learned counsel submitted that in any event, the authority ought not to have passed the orders before 25.12.2014, as the petitioner has sought time till 25.12.2014.

3. Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondent.

4. The relevant portion of the impugned order, for deciding the writ petitions, is extracted hereunder:

> "The dealer having received the notice has not filed any objections. Hence, the proposals are confirmed . . . . "

5. The learned Additional Government Pleader for the respondent is not in a position to refute the averments of the petitioner.

6. When the petitioner has sought for 20 days time to file his objections, the respondent/Commercial Tax officer, Erode, ought to have considered the request and dealt with the same in the order, before stating that the dealer has received the notice, but has not filed objections. No reason is forthcoming from the respondent as to why the time sought for by the petitioner has not been referred to in the impugned order. Since there is violation of principles of natural justice and that no opportunity has been given to the petitioner to file his objections, the impugned orders are set aside and the writ petitions are allowed with a direction to the petitioner to appear before the authority concerned on 13.2.2015 for personal hearing and also submit his objections/averments, if any. It is open to the petitioner to send the objections in advance. If the petitioner fails to avail the opportunity of hearing on 13.2.2015, for any reason whatsoever, the authority concerned can pass appropriate orders on merits and in accordance with law, based on the available records, without being influenced by the impugned orders that have been set aside by this order.

5. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

msk

To
The Commercial Tax Officer,
Nethaji Road Circle,
Erode

1 cc to Spl.G.P.(Taxes),Sr.No4815
2 cc to Mr. Mr.P.J.Rishikesh,Advocate, SR.No.4676,4675

W.P.Nos.1818 and 1819 of 2015

RSI(CO)
PMK.10.2.2015