IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.Nos.18304 and 18305 of 2015
and
M.P.Nos.1 and 1 of 2015

Tvl.Nallapulliamman Sago Factory rep. by
its Proprietor N.Vijayakumar ... Petitioner in both W.Ps

Vs

The Assistant Commissioner (CT),
Rasipuram Assessment Circle,
Rasipuram. ... Respondent in both W.Ps

Writ petitions filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records on the file of the respondent in TIN Asst. No.33513164436/2014-15 (in WP.18305/15) and TIN Asst. No.33513164436/2013-14 (in WP.18304/15) dated 18.05.2015 and quash the same as being without jurisdiction and authority of law and contrary to the principles of natural justice.

For Petitioner : Mr.R.Senniappan in both the W.Ps

For Respondents : Mr.A.N.R.Jayapratap,
Government Advocate (T)

COMMON ORDER

Challenging the notice and order of the respondent in TIN Asst. No.33513164436/2013-14 and TIN Asst. No.33513164436/2014-15 respectively dated 18.05.2015, the petitioner has filed these writ petitions.

2.The petitioner is a registered dealer under the TNVAT Act, 2006 and manufacturer of sago and starch and assessee on the file of the respondent. Since the petitioner was suffering from kidney disease, he could not carry on his business activities for more than one year. While so, an inspection was conducted by the officials of the Enforcement Wing, Sankari on 03.06.2014. Since no business activities are carried out, the petitioner filed Nil returns for the period from April, 2013 to October, 2014. But the respondent issued a notice dated 17.10.2014 stating that they are proposing to cancel the registration certificate, to which, the petitioner submitted his reply dated 14.11.2014 along with medical reports. Thereafter, the respondent issued another notice dated 04.03.2015 for the assessment year 2013-2014 on the basis of the proposal sent by the enforcement authority. Objecting the same, the petitioner sent a reply dated 08.04.2015. The grievance of the petitioner is that without even considering the said reply, the respondent confirmed the proposal and passed the impugned order dated 18.05.2015 for the assessment year 2013-2014 and issued notice dated 18.05.2015 for the assessment year 2014-2015. Aggrieved by the same, the petitioner is before this Court with these writ petitions.

3.On instructions, the learned Government Advocate submitted that since because the petitioner was not filing any reply, previous year transaction has been taken into consideration for passing assessment order for the assessment year 2013-2014, followed by notice for the year 2014-2015. He also submitted that the assessee did not cooperate with the respondent by producing proper evidences to substantiate his claim and hence there are no merits in these writ petitions.

4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate appearing for the respondent.

5.The assessment order as well as notice cannot be sustained in the eye of law for the simple reason that for passing an order of assessment for the assessment year 2013-2014, the assessing authority relied upon the proposal of the enforcement wing relating to the previous year i.e. 2012-2013. Though the petitioner was having documentary evidences to show that he was not able to do any business for the assessment year in question, due to ill health, the same was not able to be produced. However, without affording an opportunity of personal hearing, the assessment order came to be passed for the assessment year 2013-2014, taking into account the previous assessment year. This sort of practice cannot be countenanced.

6.Every assessment is summary in nature. Filing of objections, production of accounts and relevant records, calling for further details are to be done in a fair and judicious manner. There should be fair proceedings before passing any orders. The assessing authority, who is a quasi judicial authority, in exercising his quasi judicial function, is expected to apply mind independently and pass necessary orders. In these cases, the respondent failed to do so.

7.For the above reasons, the impugned order as well as notice are set aside and matter is remanded back to the assessing authority for issuing notice and passing orders afresh. The respondent shall issue fresh notice for both the assessment years, within a period of two weeks from the date of receipt of a copy of this order. The petitioner is also permitted to file necessary objections along with documentary evidence, within a period of two weeks from the date of receipt of the notices. On such filing of objections along with documentary evidence, the respondent shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter. The writ petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

mmi

To

The Assistant Commissioner (CT),
Rasipuram Assessment Circle,
Rasipuram.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.49057
+1cc to the Special Government Pleader(Taxes), S.R.No.48939

W.P.Nos.18304 and 18305 of 2015

CA(CO)
CA(01/10/2015)