IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2015

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.18611 to 18613 of 2015
and
M.P.Nos.1 of 2015

M/s.Shri Kuppayanna Swamy Agency
Represented by its Partner
582 Nehru Nagar
Punjai Puliyampatti. [Petitioner in all WPs]

Vs

The Commercial Tax Officer
Sathyamangalam. [Respondent in all WPs]

PRAYER : The Writ petitions are filed under Article 226 of the Constitution of India praying for a Writ of certiorarified mandamus to call for the records of the Respondent in the impugned order in TIN Nos. 33362983080/2011-12 to 2013-14 respectively dated 18.05.2015 quash the same as there in a patent violation of principles of natural justice and in violation of the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and direct the respondent to consider the original invoices.

For Petitioner : Ms.S.Radhika Chandra Sekhar

For Respondent : Mr.V.Haribabu, AGP(T)

C O M M O N   O R D E R

Heard the learned counsel for the petitioner and Mr.A.Kumar, learned Additional Government Pleader(Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These three writ petitions are filed by M/s Shri Kuppayanna Swamy Agency, represented by its Partner, challenging the impugned proceedings issued by the Commercial Tax Officer, Santhyamangalam, in TIN Nos. 33362983080/2011-12 to 2013-14 respectively dated 18.05.2015.

3. Learned counsel for the petitioner submitted that the impugned orders are not sustainable on the ground that the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes has been overlooked and the respondent also has failed to consider the details submitted by the petitioner before passing the impugned orders.

4. Learned counsel for the petitioner would further submit that the petitioner, who is a registered distributor of M/s PEPSICO India Pvt. Ltd., paying VAT and filing monthly returns regularly, after receipt of notices in TIN Nos. 33362983080/2011-12 to 2013-14 respectively dated 24.02.2015, proposing VAT on discount received and reversal of ITC adjusted, appeared before the respondent along with original invoices on 13.02.2015, however, the respondent, again directed the petitioner to produce sample copies of invoices in their office. She would further submit that accordingly the copies of invoices were also produced by the petitioner before the respondent. But, all of a sudden, the impugned orders have been passed, contrary to the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes, which clarifies that no order of revision should be made without affording an opportunity to the dealer as provided under Sections 22, 25 and 27 of the Act. On that basis, learned counsel for the petitioner further contended that the respondent has violated the decision of the Hon'ble Supreme Court in the case of Padinjarekara Agencies Ltd., State of Kerala reported in (2008) 13 VST 151.

5. This Courts finds it difficult to agree with any one of the submissions made by the learned counsel for the petitioner for more than one reason. Admittedly, the petitioner received notices in respect of the assessment years in question dated 09.10.2014 and again the respondent has issued respective notices dated 12.01.2015 and finally, the petitioner was issued with the 3rd respective notices dated 24.04.2015. It is also an admitted position that the petitioner, after receipt of all these notices, appeared before the respondent on 13.02.2015 in person along with original invoices. When that be the case, it is not known why the petitioner has not gone before the respondent with a written reply. When the petitioner appeared before the respondent, in all fairness, he should have submitted his replies.

6. In view of the above, when the petitioner has received three notices on 09.10.2014, 12.01.2015 and 24.04.2015 for all the assessment years, finding that he has not filed any reply whatsoever to any one of the notices, this Court is of the view that the respondent is right in passing the impugned orders. Hence, the writ petitions are dismissed. However, it is open to the petitioner to challenge the same before the appellate authority, if so advised. No costs. Connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Commercial Tax Officer
Sathyamangalam.

1 CC to Mr.K.Vaitheeswaran, Advocate SR.No. 31957

1 CC to the Spl.Government Pleader (Taxes), SR.No. 31697

W.P.Nos.18611 to 18613 of 2015
and connected MPs

MSM (CO)
PSI (09.07.2015)