IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.Nos.18936 to 18938 of 2015

M/s.Inter Foto India Pvt. Ltd.,
Rep.by its Manager Mr.D.Vijayakumar,
No.90, Shop No.2B,
Third Floor, Wellington Plaza,
Anna Salai, Chennai - 600 002. ... Petitioner
in all the writ petitions

Vs.

The Assistant Commissioner,
Chepauk Assessment Circle,
No.1, Greams Road,
Chennai - 600 108. ... Respondent
in all the writ petitions

COMMON PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue writ of certiorarified mandamus to call for the records of the respondent in TIN 33150561542/2011-12, TIN 33150561542/2013-14, TIN 33150561542/2012-13, respectively, dated 12.05.2015, quash the same and consequently, direct the respondent to lift the attachment of the bank accounts of the petitioner and its branches.

In all the Writ Petitions:

For Petitioner :Mr.S.Raveekumar

For Respondent :Mr.S.Kanmani Annamalai, AGP (T)

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C O M M O N O R D E R

In all these Writ Petitions, the petitioner, who is the registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006, and Central Sales Tax Act, 1956, challenged the order of assessment for the assessment years 2011-12, 2012-13 and 2013-14.

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2. It is submitted by the learned counsel appearing for the petitioner that based on the report received from the Enforcement Wing Officials on 24.10.2014, the respondent served a notice dated 29.01.2015 alleging that there was a difference in the amount of sales turnover and purchase turnover as claimed in the monthly returns and in the accounts maintained by the petitioner. On receipt of such notice, the petitioner submitted his reply dated 13.02.2015 giving a point wise explanation stating that there is no difference in the amount of purchase/sales turn over as specified on comparison with the monthly returns and the accounts. With regard to the sales return, it was stated that the tax paid on the sale transaction was deducted on the very same month and the same was reflected in the returns and annexures. However, without taking note of such details given by the petitioner by way of reply, the respondent passed a cryptic order, that too without providing an opportunity of personal hearing, for, as per Section 27(2) of the TNVAT Act, no order shall be passed without giving a reasonable opportunity to show cause against such order, therefore, on this score, he sought for quashing the impugned assessment orders.

3. Learned Additional Government Pleader (Tax) appearing for the respondent stated that before passing the impugned assessment orders, the respondent ought to have provided an opportunity of personal hearing to the petitioner, however, since such procedure was not followed by the respondent, a direction may be issued to the respondent to pass orders afresh after following the above said procedure.

4. A mere reading of the impugned orders show that the the respondent, while considering the objection filed by the petitioner, has passed the present impugned order on the ground that the petitioner had deposed a statement before the Enforcement Wing Officials and hence, their objection on this issue was overruled. But, it is not known as to what was the statement made by the petitioner at the time VAT Audit before the Enforcement Wing Officials.

5. Further, the petitioner was not provided with an opportunity of personal hearing before the impugned orders, which are in violation of Section 27 of the TNVAT Act, for, no penalty shall be imposed under the Section without affording the concerned dealer an opportunity of personal hearing against such penalty, therefore, this Court, without going into the merits of the matter, directs the respondent to provide a reasonable opportunity of personal hearing to the petitioner as contemplated in Section 27 of the TNVAT Act and thereafter to pass orders upon considering the point-wise reply dated 13.02.2015 of the petitioner on merits and in accordance with law. The respondent is further directed to issue a notice to the petitioner mentioning the date of personal hearing. It is brought to the notice of this Court by the learned counsel for the petitioner that pursuant to the impugned orders, the respondent has realised the

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entire amount deposited in the Banks by way of attachment. Therefore, the respondent is directed to refund the balance amount to the petitioner, after adjusting their liability.

6. In fine, the writ petitions stand allowed by setting aside the impugned orders. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rkm
To

The Assistant Commissioner,
Chepauk Assessment Circle,
No.1, Greams Road,
Chennai - 600 108.

+1cc to M/s. S. Raveekumar, Advocate, S.R.No.34766
+3ccs to the Government Pleader, S.R.No.34766

PPA(CO)
EU(23/07/2015)

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