IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.07.2015

CORAM:

THE HON'BLE MR.JUSTICE T.RAJA

W.P.Nos.20648 and 20649 of 2015
and
M.P.Nos.1 of 2015

Emas Engineers and Contractors
Private Limited,
represented by its Authorized Signatory,
M.Narayanamurthi,
No.6, First Main Road,
Gandhi Nagar, Adyar,
Chennai - 600 020. ...Petitioner in both WPs

Vs.

Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028. ...Respondent in both WPs

Prayer: Writ Petitions in W.P.Nos.20648 and 20649 of 2015 are filed under Article 226 of the Constitution of India seeking for the relief of issuance of writ of Certiorarified Mandamus to call for the records relating to impugned proceedings of the respondent passed in TIN Nos.33670861956/2009-2010 dated 27.04.2015 and 33670861956/2010-2011 dated 30.04.2015 respectively and quash the same and further direct the respondent to complete the assessment after considering objections and providing personal hearing in accordance with the provisions of the TN VAT Act, 2006.

For Petitioner in both W.Ps : Mr.N.Murali

For Respondent in both W.Ps : Mr.S.Kanmani Annamalai, Addl.Govt.Pleader (Taxes)

ORDER

These writ petitions are filed against the impugned orders passed by the Assistant Commissioner (CT) Kotturpuram Assessment circle in TIN Nos.33670861956/2009-2010 dated 27.04.2015 and 33670861956/ 2010-2011 dated 30.4.2015 respectively.

2. Learned counsel appearing for the petitioner, assailed the very correctness of the impugned orders and also the approach adopted by the assessing officer and he submitted that the assessing officer has committed serious mistake in passing the orders without application of mind. In support of his submission, he would submit that the petitioner, being a registered dealer, on the files of the respondent, completed the assessment for the years 2009-2010 and 2010-2011 under self assessment procedure as per Section 22 of the Tamil Nadu Value Added Tax Act. The respondent has reopened the assessment on the basis of the report of the Enforcement Wing Officials, who inspected the place of business on 30.4.2014 and subsequently pre-revision notices dated 31.7.2014 were issued inviting reply from the petitioner. Detailed replies were prepared and sent by the petitioner on 5.8.2014 and the same were also acknowledged by the Officer. Learned counsel also brought to the notice of this Court the proof of acknowledgement of his replies dated 5.8.2014. A perusal of the same shows that the replies of the petitioners dated 5.8.2000 have been duly acknowledged by the respondent. Once again he has also brought to the notice of the Court the replies dated 29.8.2014 for the pre-revision notices issued by the respondent to the petitioner on 14.8.2014. A perusal of the same also reveals that the same were also acknowledged on 29.8.2014.

3. On perusal of the material placed, inspite of repeated filing of replies by the petitioner and the repeated acknowledgments of the same, it is not known how in the impugned orders the respondent has erroneously stated that the petitioner has not filed reply. So, this Court is of the view that the respondent has not applied his mind in passing the impugned orders, resultantly the petitioner has been put to prejudice.

4. For the foregoing reasons, the impugned orders are hereby set aside and the respondent - assessing officer is directed to re-consider the issue on the basis of two replies dated 5.8.2014 for the notice dated 31.7.2014 and one another reply dated 29.8.2014 for the notice dated 14.8.2014 on merits independently as a quasi judicial officer by passing speaking orders in respect of the assessment years 2009-2010 and 2010-2011.

With the above clear direction, the impugned orders are set aside and the writ petitions are allowed. However, there is no order as to costs. Consequently, the connected miscellaneous partitions are closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

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To

Assistant Commissioner (CT),
Kotturpuram Assessment Circle,
No.46, Greenways Road,
Chennai - 600 028.

2 CCs to Mr.N.Murali, Advocate SR.No. 35070

1 CC to the Spl.Government Pleader (Taxes), SR.No. 35054

W.P.Nos.20648 and 20649 of 2015

KU (CO)
PSI (22.07.2015)