IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.08.2015

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.21741 to 21743 of 2015 &
M.P.Nos.1 of 2015 (3MPs)

Tvl.Sri.Ramajayam Road Cosntructions,
Reprsented by tis Proprietor
No.3, Cresent Park Street,
T.Nagar,
Chenai - 600 017. ... Petitioner in all Wps

v.

The Commercial Tax Officer
T.Nagar Assessment Circle,
No.46, Greenways Road,
R.A.Puram,
Chennai - 600 028. ... Respondents in all WPs

Prayer in W.P.No.21741/15:- 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 herein bearing TIN 33491581310/ 2007-2008, dated 26.12.2014 and to quash the same as illegal arbitrary and unconstitutional in nature and further direct the respondent to issue fresh notices to the petitioner as provided under Sec.27 of the TNVAT Act in accordance with law by following the judgement rendered by this Honourable High Court in 60 VST 149 and in W.P.No.17473 of 2014 dated 3.7.2014 Court.

Prayer in W.P.No.21742/15:- 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 herein bearing TIN 33491581310/ 2008-2009, dated 26.12.2014 and to quash the same as illegal arbitrary and unconstitutional in nature and further direct the respondent to issue fresh notices to the petitioner as provided under Sec.27 of the TNVAT Act in accordance with law by following the judgement rendered by this Honourable High Court in 60 VST 149 and in W.P.No.17473 of 2014 dated 3.7.2014 Court.

Prayer in W.P.No.21743/15:- 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 herein bearing TIN 33491581310/ 2009-2010, dated 26.12.2014 and to quash the same as illegal arbitrary and unconstitutional in nature and further direct the respondent to issue fresh notices to the petitioner as provided under Sec.27 of the TNVAT Act in accordance with law by following the judgement rendered by this Honourable High Court in 60 VST 149 and in W.P.No.17473 of 2014 dated 3.7.2014 Court.

For Petitioner :Mr.A.Ravichandran

For Respondents :Mr.S.Manoharasundaram AGP (T)

COMMON ORDER

Heard Mr.A.Ravichandran, learned counsel for the petitioner and Mr.S.Manohar Sundaram, learned Additional Government Pleader (Taxes).

2. These writ petitions have been filed by M/s.Sri.Ramajayam Road Constructions, represented by its Proprietor viz., Mr.V.Seenivasan, challenging the impugned proceedings of the respondent in TIN No.33254321886, dated 26.05.2015 for the assessment years 2007-2008, 2008-2009 and 2009-2010 respectively and to quash the same as illegal arbitrary and unconstitutional in nature and further direct the respondent to issue fresh notices to the petitioner as provided under Sec.27 of the Tamil Nadu Value Added Tax Act 2006 (hereinafter referred to as TNVAT Act) in accordance with law by following the judgement rendered by this Honourable High Court in 60 VST 149 and in W.P.No.17473 of 2014 dated 3.7.2014.

3.1 The petitioner is a registered dealer on the files of the respondent under the provisions of the TNVAT Act and carrying on the business in construction activities. According to him, the petitioner had sent a letter dated 1.8.2013 to the respondent (Formerly being Nandanam Assessment Circle) wherein the petitioner had intimated its ineligibility to continue business and accordingly had sought to surrender its registration numbers under TNVAT Act and CST Act and had also enclosed both the respective original registration certificates as part of the surrender procedure and in pursuance to the acceptance of the petitioner's letter dated 1.8.2013, the respondent had cancelled the petitioner's TNVAT and CST registration vide Pdl.No.178/2013/A2, dated 31.10.2013.

3.2 While so, the assessment in TIN No.33254321886, dated 26.05.2015 for the assessment years 2007-2008, 2008-2009 and 2009-2010 were made under deemed assessment basis and were deemed to have been completed under section 22(2) of the TNVAT Act, 2006. Thereafter, the respondent issued a revision notice dated 21.11.2014, which is alleged to have been affixed at the petitioner's place of business and a copy of the said notice was also issued by RPAD to the petitioner only to be returned with the postal endorsement as “left”.

3.3 Since no objections were able to be set from the petitioner's end on account of non-receipt of the notice dated

21.11.2014, the respondent had passed the revised assessment order under section 27 of the TNVAT Act stating that the petitioner's place was inspected by the Enforcement Wing officials on 14.6.2010 and during such inspection, certain defects were noticed by the inspecting officials as stated therein.

3.4 It is the case of the petitioner that the respondent had passed the assessment orders under section 27 of the TNVAT Act without any notice and without affording any opportunity to the petitioner to produce the bills, documents and other records. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner submitted that the notice as well as the other communications have not been served on the petitioner. But, the authorities were able to serve the assessment orders directly to the petitioner, which proves that the petitioner could very well be reached by the respondent. Further, according to the learned counsel for the petitioner, the orders were passed under Section 22(2) of the TNVAT Act, so the imposition of penalty under Section 27(3) of the TNVAT Act, is impermissible. Hence he prayed to quash the order.

5. The learned Additional Government Pleader (Taxes) supported the assessments made by the respondent.

6. Heard both sides and perused the file produced by the learned Additional Government Pleader (Taxes).

7. This court after perusal of the files finds that there is violation of principles of natural justice. The authority, without affording sufficient opportunity to the petitioner, passed the impugned orders, which is not justifiable. Apparently, without serving assessment notice and providing a reasonable opportunity of being heard the impugned orders came to be passed. On this score itself, the impugned orders are liable to be set aside.

8. In the result, the impugned orders passed by the respondent in TIN No.33254321886, dated 26.05.2015 for the assessment years 2007-2008, 2008-2009 and 2009-2010 are set aside and the matters are remitted back to the assessing authority for fresh consideration. The petitioner shall file necessary objections along with all the documentary evidences, within a period of two weeks from the date of receipt of a copy of this order and on such filing, the authority concerned shall consider the same and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter, after affording an opportunity of personal hearing to the petitioner. If the petitioner fails to comply any of the directions, it is open to the respondent to pass appropriate orders.

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

Rj

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

The Commercial Tax Officer
T.Nagar Assessment Circle,
No.46, Greenways Road,
R.A.Puram,
Chennai - 600 028.

+3 cc to Mr.A.Ravichandran, Advocate, sr.44546
m+1 cc to Special Government Pleader (Taxes), sr.44568

W.P.Nos.21741 to 21743 of 2015 &
M.P.Nos.1 of 2015 (3MPs)

tej(co)
kra(31/08)