IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.07.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.Nos.21916 to 21920 of 2015
and M.P.Nos.1 of 2015

M/s.Talent Engineering (Coimbatore) Pvt. Ltd. [Petitioner in all WPs]
S.F.No.475 K.G. Palayam
Karegoundanpalayam Annur 641 697
rep. by its Director Mr.D.Rajivmohan

Vs

The Assistant Commissioner (CT)
Avinashi Assessment Circle Avinashi [Respondent in all WPs]

COMMON PRAYER: The Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorarified mandamus calling for the records relating to the proceedings of the respondent in TIN 33792083314/2007-08 to 2009-10, 2011-12 and 2012-13 respectively dated 16.6.2015 quash the same and consequently direct the respondent to provide copies of the extracts of the imports and to check the accounts and audited balance sheet with reference to the said extract of imports and to afford fair opportunity to file their reply.

For petitioner : Mr.S.Raveekumar in all WPs

For respondent : Mr.S.Kanmani Annamalai, AGP(T) in all WPs.

C O M M O N   O R D E R

Heard the learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Special Government Pleader, who took notice for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorarified mandamus to call for the proceedings of the respondent in TIN 33792083314/2007-08 to 2009-10, 2011-12 and 2012-13 respectively dated 16.6.2015 and to quash the same and consequently direct the respondent to provide copies of the extracts of the imports and to check the accounts and audited balance sheet with reference to the

said extract of imports and to afford fair opportunity to file their reply.

3. The grievance of the petitioner is that the request for furnishing the the copies of extracts of the import purchases have not only been ignored, even the genuine request for affording an opportunity of personal hearing to explain their case has also been brushed aside by the respondent. According to the learned counsel for the petitioner, the impugned orders have been passed overlooking the two genuine requests made by the petitioner, causing unimaginable hardships to the petitioner.

4. Learned counsel for the petitioner would further submit that when the petitioners are the registered dealers having TIN 33792083314 in the books of the respondent and paying taxes under TNVAT and CST on the sale of TMT CTD bars manufactured in their factory, they have received pre-assessment notices dated 06.03.2015 informing them that the extracts of import data was verified with Annexure I of the respective monthly returns and it was finally found to be not reported Import of Iron and Steel for the respective assessment years and on that basis, the respondent proposed to levy tax along with penalty under the TNVAT Act. Immediately on receipt of notices dated 06.03.2015, the petitioner submitted their replies on 16.04.2015, making it clear that inasmuch the input tax credit was not claimed, the import purchases were not reported and requested to drop the proposal. Again on 09.06.2015, the petitioner submitted letters with a request to furnish copies of the extracts of the import purchases relied upon by the respondent for the respective assessment years and also prayed for an opportunity of personal hearing. Unfortunately, the respondent, ignoring the above genuine requests, wrongly passed the impugned orders.

5. According to the learned counsel for the petitioner, had the respondent complied with the aforesaid requests, perhaps the petitioner would be in a better position to explain that the proposal made by the respondent was wrong. As he did not do so, the petitioner has come before this Court.

6. This Court also finds merits in the submissions made by the learned counsel for the petitioner for two reasons. Firstly, when the respondent has proposed to levy tax along with penalty, as per the mandatory provision enunciated under Section 22(4) of the TNVAT Act, personal hearing is Sine qua non. But, in the present cases, violating the mandatory provision as stated supra, the respondent has refused to grant personal hearing before passing the impugned orders. Secondly, the copies of the extract relied upon by the respondent not prov ided. Therefore, the same are liable to be interfered with. Further, when the petitioner, in their letters dated 09.06.2015, has sought for copies of the extract of import purchases relied upon by the respondent, it is not known why the respondent has withheld all the informations. When the respondent proposed to proceed against the

petitioner and when copies of the extract of import purchases relied upon by the respondent have been sought for, the respondent ought to have furnished the same.

7. Therefore, for the above stated two reasons, I am of the considered view that the impugned orders are liable to be set aside . Accordingly, the writ petitions are allowed and the impugned orders are set aside. The matters are remanded to the respondent for fresh consideration. It is needless to mention that the respondent shall furnish copies of the extracts of import purchases for the respective assessment years and the petitioner shall also be given an opportunity of personal hearing before passing the final orders.

No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To

The Assistant Commissioner (CT)
Avinashi Assessment Circle Avinashi

+1 cc to The Special Government Pleader(Taxes), sr.37244

W.P.Nos.21916 to 21920 of 2015

rj(co)
kra(26/08)