IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.23191 and 23192 of 2015

and M.P.Nos.1 of 2015

Tvl.RP Telebuy Skyshop Private Ltd., [Petitioner in both WPS]
Rep. by its Director C.Vasanth
No.14-13th Main Road India Land Tech Park
Ambattur Industrial Park Chennai-58.

Vs

The Assistant Commissioner(CT)
Vadapalani Assessment Circle
No.1 Greams Road Chennai-6.
[Respondent in both WPS]

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorarified mandamus to call for the impugned proceedings on the file of the respondent in CST 867656/ 2011-12 and 2012-13 respectively dated 25.6.2015 and 26.6.2015 quash the same and to direct the respondent to redo the assessment after giving personal hearing.

For Petitioner : Mr.R.Sivaraman

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

COMMON ORDER

Heard the learned counsel for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the main writ petitions are taken up for hearing at the admission stage itself.

2. These writ petitions are filed challenging the impugned proceedings of the respondent in CST 867656/ 2011-12 and 2012-13 dated 25.6.2015 and 26.06.2015 respectively and to direct the respondent to redo the assessment after giving personal hearing to the petitioner.

3.1 The learned counsel for the petitioner would submit that the petitioner, who is a trader of textile items, classified under the commodity code 2115 of the Tamil Nadu Value Added Tax Act, 2007, is a registered dealer under the Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as "the Act") and CST Act, 1956 with TIN No.33571463896 and CST No.867656 on the files of the respondent. They are regularly filing the monthly returns before the respondent under Section 21 of the Act and also under the CST Act, 1956. For the assessment years in question viz., 2011-12 and 2012-13, the petitioner has submitted monthly returns in Form I disclosing their total and taxable turnover and the respondent has finalized the assessment under Section 22(2) of the Act as Deemed Assessment accepting the reported turnover. While that being the case, the Enforcement Wing Officials inspected the place of the business of the petitioner on 04.06.2013 and during the course of which, they noticed that there were few defects and omissions in the transactions and based on their finding, the assessment orders were passed under Section 27 of the Act, without giving an opportunity of being heard.

3.2 It is the contention of the learned counsel for the petitioner that by referring to the Enforcement Wing Officials report and invoking Section 27 of the Act, pre-revision notices dated 23.12.2014 were served on the petitioner on 31.12.2014, for which, the petitioner, filed replies dated 11.05.2015, in and by which, they enclosed a portion of Form F and made detailed submissions regarding the classification issue of the readymade garments. Again, by their letters dated 15.06.2015, the petitioner requested time for submitting Form F for the assessment years in question. However, the respondent, without considering the same, by orders dated 25.06.2015, confirmed the turnover proposed in the pre-revision notices.

3.3 According to the learned counsel for the petitioner, since the textile items are classified under the residuary entry by the Department, the matter was taken before the appellate authority by filing an appeal in A.P.No.68/2015 CST for the assessment year 2010-11. The issue of non furnishing of statutory forms was also dealt. The appellate authority had considered the claim and remanded the matter for re-consideration and allowed the appeal partly. The said order was not taken into consideration by the respondent. It is also brought to the notice of this Court that for the assessment year 2011-12, a rectification petition under Section 84 of the Act was also filed and the same was not considered. Hence, the learned counsel prayed for quashing the impugned orders.

4. The learned Additional Government Pleader (Taxes) on the other hand supported the orders under challenge.

5. The impugned orders are challenged on the ground of violation of principles of natural justice. It is apparent that the respondent extracted the reports of the Enforcement authorities without taking into consideration the appellate authority's order in A.P.No.68/15 as well as the reply made by the petitioner. Further, without affording due opportunity for production of forms, the Assessing Authority, de hors the specific request made by the petitioner, has passed the orders, which are unsustainable.

6. Hence, without going into the merits of the matter, only on the ground of violation of principles of natural justice, the impugned orders are set aside and the matters are remitted back to the Assessing Authority for providing an opportunity of being heard for the purpose of production of documentary evidences as well as statutory forms. Such production shall be made by the petitioner, within a period of four weeks from the date of receipt of a copy of this order and on such filing of documents, the Assessing Authority, shall pass appropriate orders, on merits and in accordance with law, within a period of four weeks thereafter.

The writ petitions are disposed of in the above terms. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The Assistant Commissioner(CT)
Vadapalani Assessment Circle
No.1 Greams Road Chennai-6.

+1 cc to Mr.R.Sivaraman,Advocate(Sr.41072)
+1 cc to Special Government Pleader (Taxes)SR.40697)

W.P.Nos.23191 and 23192 of 2015

KSJ(co)
cp 24.08.2015