IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2321 to 2323 of 2015

and M.P.Nos.1 to 1 of 2015

Daimler Financial Services India Private Limited
RMZ Millenia Business Park,
No.143, DR.MGR Road,
Perungudi, Chennai 96. ... Petitioner in all W.Ps.

Vs

1. The Commissioner of Commercial Taxes
   Thiruvanmiyur Assessment Circle,
   New Private Building,
   OMR, Plot No.141, 1st Floor, Yazhini Complex,
   1 Main Road, Burma Colony,
   Perungudi, Chennai 600 096.

2. The Assistant Commissioner of Commercial Taxes,
   Thiruvanmiyur Assessment Circle,
   New Private Building,
   OMR, Plot No.141, 1st Floor, Yazhini Complex,
   1 Main Road, Burma Colony,
   Perungudi,
   Chennai 600 096. ... Respondents in all W.Ps.

Prayer in all W.Ps.: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records and quash the impugned order in TIN No.33480927196 for the assessment years 2011-12 to 2013-14 respectively dated 29.12.2014 passed by the second respondent.

For Petitioner : Mr.Neil Hildfreth

for Sandeep Bagmar.R

For Respondents : Mr.A.R.Jayapratap
Government Advocate (Tax)

C O M M O N   O R D E R

With the consent on either side the Writ Petitions are taken up for final disposal at the admission stage itself.

2. The petitioner is a Non-Banking Finance Company, who purchased cars and leasing the vehicle to the customers. Petitioner submitted that he received notice directing to furnish of the documents, returns for audit and audit was conducted by Enforcement Wing. Based on the Audit Report, Pre-Revision notice was issued stating about ineligibility of input tax availed on cars purchased on the basis of tax invoices. The petitioner had replied to the Pre-Revision notice that the ITC has been inclined on the basis of tax invoice issued by sellers and that has been paid on tax on unused cars. The petitioner has also sought for personal hearing. The petitioner contended that without considering the objection, the impugned order has been passed for the assessment year in question confirming the turn over proposed in the Pre-Revision notice.

3. Per contra, the learned Government Advocate appearing for the respondents contended that the objections were considered and detail order has been passed and hence, the remedy of the petitioner lies before the different forum and they cannot resort to this court by filing the writ petition.

4. In reply, the learned counsel for the petitioner prays to quash the impugned proceedings only on the ground that no opportunity was given to the petitioner and he sought for time to submit the documents which have been referred to in the impugned order, even though the respondent has not given any opportunity of personal hearing to the petitioner.

5. In reply, again, the learned Government Advocate for the respondents pointed out that when the order has been passed on merits, more than 30 days time has expired and the petitioner has approached this Court to gain time in approaching the Appellate Authority and it is nothing but to drag on the matter. He prayed that the prayer sought for by the petitioner may be rejected and the impugned order may be confirmed.

6. Heard both sides.

7. The averments of the parties and a glance of the impugned order clearly shows that personal hearing has not given by the authority and hence, the impugned order is liable to be quashed. Accordingly, the same is quashed and the matter is remitted to the Authority concerned, who shall hear the petitioner and pass appropriate orders on merits and in accordance with law.

8. Accordingly, the Petitioner is directed to appear before the Authority on 16.03.2015 and make their submissions both oral and written and produce all the relevant documents, if any, in support of their case and on receipt of the same, the authority shall pass orders taking into consideration the observation stated supra, within a period of four weeks from the date of personal hearing. In case the petitioner fails to avail the opportunity on 16.03.2015, it is open to the respondent to pass appropriate orders on merits and in accordance with law within the period stipulated above, without being influenced by the earlier order passed by the Authority, which has been set aside by this Court in all these Writ Petitions.

Accordingly, all these Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

KKD

To

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   Chennai 600 096.

+3cc to Mr.R. Sandeep Bagmar, Advocate, S.R.No.5149
+1cc to the Special Government Pleader, S.R.No.5281

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