IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.11.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.23273 to 23277 of 2015

M.P.Nos.1 to 1 of 2015

Cholan Paper and Board Mills Ltd.,
having registered office at
Pukkathurai, Maduranthagam Taluk,
Kancheepuram District,
Rep. by its Managing Director,
ARM Govindarajan. .. Petitioner in all WPs'

Vs

1.The Commercial Tax Officer,
Maduranthagam Assessment Circle,
Kancheepuram District.

2.The Assistant Commissioner (CT),
Maduranthagam Assessment Circle,
Kancheepuram District. .. Respondents in all WPs'

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the second respondent in and by his proceedings in TIN/33570800222/2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively dated 20.02.2015 and consequently order passed in and by its proceedings TIN/33570800222/2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively, dated 19.06.2015 and quash the same and consequently direct the second respondent to conduct an enquiry, consider the objections of the petitioner and appropriate assessment orders.

For Petitioner in all writ petitions : Mr.V.Bharathidasan

For Respondents in all writ petitions : Mr.S.Manoharan Sundaram, AGP(T)

COMMON ORDER

Heard the learned counsel for the petitioner and Mr.S.Manoharan Sundaram, learned Additional Government Pleader (Taxes) for the respondents and with their consent, the main writ petitions are taken up for final disposal.

2. These writ petitions are filed challenging the orders of the second respondent in TIN/33570800222/2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 respectively dated 20.02.2015 and the consequential orders dated 19.06.2015.

3. The case of the petitioner is that they are registered dealers under TNVAT Act and CST Act and engaged in the manufacture of printing and writing papers, at Kancheepuram District. The petitioner claims that they are filing returns and paying the sales tax regularly.

4. According to the petitioner, earlier, in respect of assessment years in question, notices were issued, for which, the petitioner had filed their objections by producing all the necessary documents to the second respondent. However, orders dated 06.01.2015 were passed observing that the petitioner had not filed any objections and also directing to pay huge amount of tax and penalty. The said orders were challenged before this Court in W.P.Nos.2221 to 2225 of 2015, on the ground that the principles of natural justice has been violated. This Court, by order dated 30.01.2015 set-aside the assessment orders and directed the petitioner to appear before the Assessing Officer to avail the opportunity of personal hearing for filing objections. Accordingly, the petitioner appeared before the respondents. However, the second respondent for the reasons best known to him refused to receive the objections. In those circumstances, the objections were sent by the registered post on 17.03.2015, 23.03.2015 and 28.03.2015, which were received by the second respondent. However, on 20.07.2015, the petitioner received the impugned orders dated 20.02.2015 passed by the second respondent confirming the earlier orders dated 06.01.2015 along with the orders dated 19.06.2015, passed under Section 84 of the TN VAT Act rectifying the earlier orders dated 20.02.2015 without any notice or intimation to the petitioner. Aggrieved over the same, the petitioner is before this Court.

5. According to the learned counsel for the petitioner, the orders came to be passed on 20.02.2015 and the same have not been intimated. To the shock and surprise of the petitioner, the subsequent revised orders dated 19.06.2015 were also passed without any prior notice to the petitioner. The learned counsel further submits that even before passing the orders under Section 84 of the Act, the second respondent, without issuing any notice and without conducting any enquiry, has suo motu

passed the orders. It is the further contention of the learned counsel for the petitioner that the orders dated 20.02.2015 of the second respondent were not at all communicated to the petitioner earlier, but the same has been communicated along with rectification orders passed under Section 84 of the TN VAT Act. Hence, the learned counsel for the petitioner prays for quashing the orders and allowing of the writ petitions.

6. The learned Additional Government Pleader (Tax) would submit that while passing the orders dated 20.02.2015 an error had occurred and therefore, revised orders dated 19.06.2015 were passed under Section 84 of the TNVAT Act.

7. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

8. Upon on perusal of the records, it is apparent that the second respondent, without permitting the petitioner to file objection and without affording due opportunity to the petitioner has passed the orders dated 20.02.2015. Further, realizing that a mistake has been crept in, the second respondent has passed the impugned orders (rectification), under Section 84 of the TN VAT Act, dated 19.06.2015. However, without affording any opportunity to the petitioner as contemplated under Section 84 of the TN VAT Act, the said orders have been passed, which is in violation of the principles of natural justice. Neither the order dated 20.02.2015 nor the order dated 19.06.2015 complied the provisions of the TN VAT Act. On this score alone, the impugned orders cannot be sustained.

9. In view of the above, the impugned orders are set-aside and the matters are remitted back to the second respondent for fresh consideration. The second respondent is directed to send a communication to the petitioner fixing the correct date and time for the petitioner's appearance within a period of two weeks from the date of receipt of a copy of this order and on receipt of such communication, the petitioner is directed to appear on the said date along with the additional reply, if any, and on such appearance, the second respondent after necessary enquiry is directed to consider the documents and objections and pass final orders on merits and in accordance with law within a period of four weeks thereafter.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Commercial Tax Officer,
Maduranthagam Assessment Circle,
Kancheepuram District.

2.The Assistant Commissioner (CT),
Maduranthagam Assessment Circle,
Kancheepuram District.

+1 cc to Mr.V.Bharathidasan, Advocate sr.60413
+1 cc to Special Government Pleader (Taxes)
sr.61148

W.P.Nos.23273 to 23277 of 2015
M.P.Nos.1 to 1 of 2015

svk(co)
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