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.23278 and 23279 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 both WPs'

Vs

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

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

Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari to call for the records of the first respondent in and by his proceedings CST No.890417/2010-11 and 2011-12 respectively, dated 30.06.2015 and quash the same consequently direct the first respondent to consider the objections of the petitioner and conduct an enquiry and pass appropriate orders after considering the objections.

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

For Respondent in both writ petitions : Mr.S.Manoharan Sundaram, AGP(T)

C O M M O N   O R D E R

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 first respondent in proceedings CST Nos.890417/2010-11 and 2011-12, dated 30.06.2015.

3. The case of the petitioner is that they are registered dealers under TN VAT 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. The earlier orders in respect of TN VAT Act dated 06.01.2015 passed by the second respondent were challenged before this Court in W.P.Nos.2221 to 2225 of 2015, on the ground that principles of natural justice has been violated. This Court, by an order dated 30.01.2015 has set-aside the assessment orders, directed the petitioner to appear before the Assessment Officer to avail the opportunity of personal hearing and for filing objections. As directed the petitioner has filed objections, in respect of TN VAT assessment and along with the same, necessary objections have been filed in respect of CST Assessments for the year 2010-11 and 2011-12 on 16.03.2015 under due acknowledgement. However, the first respondent passed the impugned orders dated 30.06.2015 in respect of CST Nos.890417/2010-11 and 2011-12, stating that the petitioner has not filed any objections, despite the acknowledgements given. Hence, the petitioner is before this Court.

5. The learned counsel for the petitioner would submit that the first respondent has totally erred in passing the impugned orders as if the petitioner did not file their objections. He further submitted that passing the impugned orders, without considering the objections submitted by the petitioner dated 16.03.2015, is a total non-application of mind on the part of the first respondent. According to the learned counsel without considering the objections and without affording due opportunity of being heard to the petitioner, the first respondent has mechanically passed the impugned orders and therefore, they are liable to be set-aside.

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

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

8. In respect of CST Assessment for 2010-11, 2011-12, pre-assessment notices were issued, for which, the petitioner filed detailed objections running to 20 pages. However, the first respondent while passing the impugned orders dated 30.06.2015 observed that the petitioner did not file any objections, despite the fact that the objections filed were received under proper acknowledgement. A perusal of the impugned orders reveal that there is total non application of mind on the part of the first respondent while dealing with the issue on hand. Such orders cannot be sustained in the eyes of law.

9. In view of the above, the impugned orders are liable to be set-aside and accordingly, they are set-aside. The matters are remitted back to the first respondent for fresh consideration. The first 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 first 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.60414

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