IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2371 and 2372 of 2015

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

M/s.Optiomus Infracom Limited
Represented by its Authorised Signatory
R.Suresh Kumar ..Petitioner in both W.Ps.

Vs

The Assistant Commissioner of
Commercial Taxes
Valluvar Kottam Assessment Circle,
No.10, Palaniappa Maligai,
Greams Road, Chennai 600 006. . .Respondents in both W.Ps.

Prayer in both W.Ps.: Writ Petitions have been filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandmus calling for the records of the impugned order bearing Ref.No.TIN /33761503610/2011-12 and 2012-13 dated 26.12.2014 passed by the respondent demanding a sum of Rs.56,30,529, and Rs.43,36,227/- for the assessment years from 2011-12 and 2012-13 as differential tax from the petitioner and quash the same and direct the respondent to hear the petitioner by affording an opportunity to give its reply and defence by providing sufficient opportunity to produce the documents by following principles of natural justice.

For Petitioner :Mr/s.C.Saravanan

For Respondent :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 has come forward with the aforesaid Writ Petitions challenging the impugned proceedings of the respondent in TIN :TIN /33761503610/2011-12 and 2012-13 dated 26.12.2014 passed by the respondent demanding a sum of Rs.56,30,529, and Rs.43,36,227/-

for the assessment years from 2011-12 and 2012-13 on the ground that no opportunity of personal hearing was granted to the petitioner.

3.According to the petitioner, he is engaged in the various business and National Distributor for Samsung mobile handsets and registered a dealer under Tamilnadu Value Added Tax Act, 2006. The petitioner has received a notice dated 14.11.2014 on the ground that the dealer has levied ITC tax shall be paid within fifteen days of receipt of this notice, penalty under Section 27 of TNVAT Acty 2006 will also be levied, the dealers has neither filed documents nor appear in person after the lapse of 35 days. The petitioner issued a reply notice dated 26.12.2014 and he requested the respondent to cancel the demand mentioned in the notice and pass the orders in both cases. The second respondent without considering the objections, by order dated 26.12.2014 in TIN : 33761503610 for the assessment years from 2011-12 and 2012-13 passed an order, confirming the turnover proposed in the notice, dated 14.11.2014.

4.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 has sought for time to submit his documents which has been referred to in the impugned order, even though the respondent has not given any opportunity of personal hearing to the petitioner.

5. The learned Government Advocate for the respondent submitted that the petitioner has requested to provide an opportunity of personal hearing before further proceeding in both cases . But from the issuance of notice 15 days time was already over, in both cases. It is nothing, but to drag on the matter, the petitioner has approached by this Court. Hence the respondent to reject the prayer made by the petitioner and confirm the proposal already made.

6. The petitioner has neither chosen to make his submissions nor appear in person after the lapse of 35 days. Even assuming that personal hearing is mandatory, the petitioner has sought for extension of time earlier , but he did not file any objection in both cases. Hence, this Court is not inclined to grant any relief as sought for in these writ petitions.

7. However, the Petitioner is directed to appear before the Authority on 27.02.2015 and make his submissions both oral and written and also produce all the documents, if any, and shall deposit 20% of the tax amount, as agreed by the petitioner before the authority concerned, before the end of this month to have personal hearing and make his objections on 27.02.2015.

8. In case the petitioner fails to avail the opportunity on 27.02.2015, it is open to the respondent to pass appropriate orders on merits and in accordance with law without being influenced by the earlier order passed by the Authority, which has been set aside by this Court in this Writ Petition. After affording the personal hearing on 27.02.2015, the Authority shall pass order on merits, within a period of four weeks from that day.

9. In the result, these Writ Petitions are disposed of Consequently connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

The Assistant Commissioner of Commercial Taxes
Valluvar Kottam Assessment Circle,
No.10, Palaniappa Maligai,
Greams Road, Chennai 600 006.

+ 2 ccs to Mr.C. Saravanan, Advocate SR.5270
+ 1 cc to Special Government pleader Sr.5275

W.P.Nos.2371 and 2372 of 2015

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

RK(CO)

Eu 18.02.15