IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 02.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2389 to 2396 of 2015

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

M/s.Annai Agencies
No.532, Telugu Colony Road,
Kavarpet, Gummidipondi,
Chennai ...Petitioner in all WP's
(rep. by the proprietor)

Vs.

The Commercial Tax Officer(CT)
Ponneri Assessment Circle,
Chennai. ...Respondent in all WP's

Prayer in all WP's:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the respondent in the impugned order TIN No.33051701153/2007-08 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14, respectively dated 29.12.2014 quash the same as Violative of Sec.22 and Section 27 of the TNVAT Act 2006 and Violative of Principles of natural justice.

For Petitioner :Mr.K.Vaitheeswaran
For Respondent :Mr.Kanmani Annamalai
Additional Government Pleader (T)

COMMON ORDER

The petitioner has come forward with the aforesaid Writ Petitions challenging the impugned order dated 29.12.2014 on the ground that there is a violation principles of natural justice.

2.According to the petitioner he is engaged in the business of soft drinks and fruit juices and assesse on the file of the Assistant Commissioner (CT) and a registered dealer under Tamilnadu Value Added Tax Act, 2006.

3.The learned counsel for the petitioner submitted that the petitioner has given a detailed reply notice on the respondent, when they have proposed to tax the amount of Rs.7,46,801/- received as discount by referring to Section 19(20) and Section 8 A of the TN VAT Act. He has stated that the assessment deemed to be converted as Section 22 of the Act 2006 and revision is permitted under Section 27 of the TNVAT Act and Section 22(3) deals with a mechanism where not exceeding 20% of the total number of assessment shall be selected by the Commissioner for detailed scrutiny and revision of assessment shall be made, whenever necessary. There is no indication in the order with reference to the following of the procedure; selection of the appellant for the purpose of scrutiny and revision based on such scrutiny in the order. It is also further submitted that the notice states that the assessment is revised under Section 8(A) of the TNVAT Act. There is no such Section 8A of the Tamil Nadu Value Added Tax Act, 2006. The only provision that applies for revision is Section 27 and in the instant case, none of the ingredients set out in Section 27 of assessee or there is an escapement of taxable turnover.

4. It is also stated by the learned counsel for the petitioner that the assessment order was passed without extending an opportunity of being heard and there is no determination of tax payable, the petitioner was not given an opportunity of personal hearing, but he has filed objection.

5.The authority is directed to pass orders on the assessment revised under Section 88 of the Act, 2006. The petitioner has referred to contend that the tax has not been mentioned apart from that tax has been determined by the authority concerned. There is no provision under Section 88 of the TNVAT, 2006. The authority has referred to Section 8 (A) of the Central Excise Act that apart impugned order is silent about Section 27. Since the tax has not been determined and there is no Section 8(A) of the Act, the impugned order mentioned about Section 27 of the Act, 2006, personal hearing has not been given to the petitioner, the impugned order is set aside and the matter is remitted to the authority concerned. The petitioner is directed to appear before the authority concerned on 16.03.2015 and to file relevant records available with him objections if any.

6.I find force in the contention of the petitioner to set aside the order on the sole ground that no opportunity has been given and there is a violation of principles of natural justice. The impugned order is set aside. The matter is remitted to the authorities concerned to pass appropriate orders on merits within a period of four weeks from the date of personal hearing, after giving due opportunity to the petitioner for making necessary objections in writing if any. The petitioner is directed to submit his reply/objections on or before the date of personal hearing.

In view of the above said fact, these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Deputy Registrar
Dated:3.3.15

True Copy

Sub Assistant Registrar

To

The Commercial Tax Officer(CT)
Ponneri Assessment Circle,
Chennai.

+8 cc's Mr.K.Vaitheeswaran, Advocate,SR.5253

+1 cc to Spl.Government Pleader (T) sr.5276.

rsy(co)
krd 3/3

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