IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.09.2015

CORAM:

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.24885 of 2015
and
M.P.No.1 of 2015

M/s.The Indian Hume Pipe Co. Ltd.,
rep. by Deputy General Manager
Chennai 86 ... Petitioner

Vs

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
6, Greenways Road, II Floor,
Taluk Office Building, R.A.Puram,
Chennai - 28. ...Respondent

Writ petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the impugned proceedings of the respondent in TIN/33900720064/2008-09 and quash the order dated 31.03.2015 passed therein.

For Petitioner : Mr.R.L.Ramani, Sr. Counsel for Mr.B.Raveendran

For Respondents : Mr.S.Manoharan Sundaram, Addl. Govt. Pleader (T)

ORDER

This writ petition has been filed for the issuance of a writ of certiorari to quash the proceedings of the respondent dated 31.03.2015.

2.The petitioner is a company registered under the Companies Act and is a registered dealer under the provisions of the TNVAT Act, 2006 and Central Sales Tax Act, 1956. The petitioner is engaged in the business of execution of works contracts for the TWAD Board, Chennai. The enforcement wing officials conducted inspection in the place of business of the petitioner on 11.10.2012 and based on the report of the enforcement wing officials, the respondent issued notice dated 04.02.2013 for revision of assessment, without even perusing the books of accounts. The petitioner filed detailed objections on 14.03.2013 and during the personal hearing on 07.06.2013, the petitioner also submitted copies of purchase invoices. Since the officer before whom the petitioner had submitted objections, got transferred, the petitioner was under the impression that the proceedings for revision of assessment were dropped. While so, nearly after a period of two years, the petitioner was served with the impugned order dated 31.03.2015. Aggrieved against the same, the petitioner is before this Court with this writ petition.

3.Learned senior counsel appearing for the petitioner would submit that for the assessment year 2012-2013, similar order of assessment was challenged by the petitioner by filing W.P.No.6814 of 2015 and the said writ petition was admitted by this Court. He would further submit that tax under TNVAT Act can be levied only in respect of sales effected in the State of Tamil Nadu and the respondent has not given any reason for the delay of two years between the issuance of notice and passing of impugned order. Learned senior counsel has drawn the attention of this Court to the order dated 03.07.2015 made in W.P.No.19518 of 2015.

4.The learned Additional Government Pleader has not refuted the contentions of the petitioner.

5.On an earlier occasion, for the assessment year 2007-2008, notice was issued in the year 2013. Immediately, on receipt of the notice, the petitioner filed reply and personal hearing was conducted by one officer and after a period of two years, the assessment order came to be passed by a different officer, which has been challenged before this Court in W.P.No.19518 of 2015. This Court, for the same petitioner and on the same set of facts, earlier considered the claim of the petitioner and set aside the impugned order on the ground that the order came to be passed by a different officer, after a period two years. The relevant portion of the order reads as under:

> "7.It is an admitted position that the notice was issued by one personnel and after hearing, the impugned assessment order was passed by another personnel. In such circumstances, before passing the impugned order, the petitioner ought to have been given a personal hearing by the respondent as contemplated under Section 22 (4) of the TNVAT Act, 2006. Therefore, on this ground of violation of principles of natural justice, I am inclined to set aside the impugned assessment order and accordingly, the same is

set aside and the writ petition is allowed. No costs. The connected miscellaneous petition is closed. The matter is remanded to the file of the respondent for fresh hearing from the petitioner. It is needless to mention that the petitioner shall be given personal hearing and thereafter, the first respondent shall pass appropriate orders on merits and in accordance with law."

6.In this case also, admittedly, the assessment order for the year 2008-2009 came to be passed after a period of two years, without providing opportunity of personal hearing.

7.In view of the above, this Court finds it appropriate to give yet another opportunity to the petitioner. Hence the impugned order is set aside and the matter is remanded back to the respondent for passing fresh orders. The petitioner is directed to file objections along with necessary documents within a period of two weeks from the date of receipt of a copy of this order. On such filing of objections, the respondent shall consider the same and pass orders on merits and in accordance with law, after affording due opportunity of hearing to the petitioner, within a period of six weeks thereafter. The claim of the petitioner under Section 23 of the TNVAT Act shall also be considered, in accordance with law.

8.In the result, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

-Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Royapettah Assessment Circle,
6, Greenways Road, II Floor,
Taluk Office Building, R.A.Puram,
Chennai - 28.

+1 cc to Spl.Government Pleader (Taxces)(sr.51505)
+1 cc to Mr.R.L.Ramani,Advocate(sr.51487)

W.P.No.24885 of 2015

ggk(co)
cp 07/10/2015