IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2015

CORAM:

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.27479 to 27483 of 2015
and
M.P.Nos.1, 1, 1, 1 and 1 of 2015(5Nos)

M/s.Vaduvambikai Enterprises,
rep. by its Managing Partner,
Door No.32, V.Block,
Anna Nagar, Chennai - 600 040. .. Petitioner in all the above Writ Petitions.

vs.

1.The Assistant Commissioner (CT) (Main),
Amaindakarai Assessment Circle,
59, Taylors Road, Dowiath Tower, 7th Floor,
Kilpauk, Chennai - 600 010.

2.The Deputy Commissioner (CT),
Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006.

3.The Commercial Tax Officer,
Group - I, Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006. .. Respondents in all the above Writ Petitions.

Writ Petition No.27479 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/33451040654/2010-2011 and quash the impugned order dated 29.07.2015 as passed contrary to the principles of natural justice and to further direct the first respondent to consider the objections dated 13.07.2015 filed by the petitioner in an independent manner not being influenced by the proposals by the second and third respondents and pass a fresh assessment order in accordance with law.

Writ Petition No.27480 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in

TIN/33451040654/2011-2012 and quash the impugned order dated 29.07.2015 as passed contrary to the principles of natural justice and to further direct the first respondent to consider the objections dated 13.07.2015 filed by the petitioner in an independent manner not being influenced by the proposals by the second and third respondents and pass a fresh assessment order in accordance with law.

Writ Petition No.27481 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/33451040654/2012-2013 and quash the impugned order dated 29.07.2015 as passed contrary to the principles of natural justice and to further direct the first respondent to consider the objections dated 13.07.2015 filed by the petitioner in an independent manner not being influenced by the proposals by the second and third respondents and pass a fresh assessment order in accordance with law.

Writ Petition No.27482 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/33451040654/2013-2014 and quash the impugned order dated 29.07.2015 as passed contrary to the principles of natural justice and to further direct the first respondent to consider the objections dated 13.07.2015 filed by the petitioner in an independent manner not being influenced by the proposals by the second and third respondents and pass a fresh assessment order in accordance with law.

Writ Petition No.27483 of 2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the first respondent in TIN/33451040654/2014-2015 and quash the impugned order dated 29.07.2015 as passed contrary to the principles of natural justice and to further direct the first respondent to consider the objections dated 13.07.2015 filed by the petitioner in an independent manner not being influenced by the proposals by the second and third respondents and pass a fresh assessment order in accordance with law.

For petitioner : Mr.P.Rajkumar

For respondents : Mr.S.Kanmani Annamalai
Addl.Govt.Pleader

ORDER

The petitioner is a partnership firm engaged in Civil Construction Works such as road laying works for Corporation of Chennai and also a registered dealer on the files of the first respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006. It is the claim of the petitioner that in respect of its transfer of goods in execution of works contract, they filed returns and paid appropriate taxes to the department. The petitioner's assessments for the assessment years 2007-08 to 2014-15 were completed as deemed assessments in which the monthly returns filed by the petitioner were accepted as such. Thereafter, there was an inspection conducted by the enforcement wing officials based on which certain defects were pointed out by them and accordingly, show cause notice was issued.

2. Learned counsel appearing for the petitioner would specifically submit that just for implementing the proposal of the enforcement wing officials, the show cause notice came to be issued without pointing out any discrepancies but simply extracting the report forwarded by the enforcement wing officials. In reply, the petitioner filed detailed objections on 13.07.2015 meeting out each and every aspect of the irregularities pointed out in the show cause notice and also sought for perusal of all the books of accounts as required by the officials. Without considering the same and without affording an opportunity of hearing to the petitioner, the impugned orders came to be passed. Hence, the petitioner is before this Court seeking for the relief as stated above.

3. Learned counsel appearing for the petitioner would further submit that the assessment proceedings which are summary in nature, naturally, requires production of accounts and relevant records for completion of assessments. It is the bounden duty of assessing authority to call for the records for the purpose of verification and afford due opportunity of hearing to the petitioner before passing the assessment order. In this case, according to the petitioner, the respondent did not issue any summons for production of accounts for verification and all of a sudden, the impugned order came to be issued, which is bad in law.

4. Heard the learned counsel appearing for the parties and perused the impugned orders.

5. Admittedly, the petitioner filed detailed objections and also came forward to produce all the required books as well as details if directed by the authority, but the assessing authority miserably failed to look into the said submission and straight away proceeded to pass the assessment orders. It is also apparent that though the assessing authority has extracted the detailed objections placed before him in the impugned assessment orders, ultimately, in one single line held that the objections cannot be considered. In the counter affidavit filed by the first respondent dated 03.09.2015, in Paragrah No.6, they admitted the objections filed by the petitioner but the same was not considered. The methodology adopted by the assessing authority is contrary to the provisions of the Act and also shows non-application of mind. Needless to mention that

the provisions of the Act mandate the respondent to afford reasonable opportunity of hearing to the assessee before passing the assessment orders so as to produce all evidences and prove their accounts. The claim of the petitioner that the objections filed by the petitioner was not considered and an opportunity of hearing was not afforded appears to be true by virtue of the manner in which the impugned order came to be passed.

6. In the light of the above discussion, this Court is inclined to set aside the impugned assessment orders and remit the matter to the assessing authority. Accordingly, the impugned assessment orders are set aside and the matter is remitted to the assessing authority for fresh consideration. The petitioner is directed to produce the account books and file detailed addiitional objections for each and every one of the defects/irregularities pointed out by the assessing authority in the notice dated 13.6.2015 within a period of two weeks from the date of receipt of a copy of this order. On such filing of objections, the assessing authority shall look into the same and consider each and every objection on the basis of documentary evidence to be produced and thereafter, pass appropriate orders after affording an opportunity of being heard to the petitioner. This exercise shall be completed within a period of six weeks from the date of receipt of objections. The Writ Petitions are disposed of. The connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The Assistant Commissioner (CT) (Main),
Amaindakarai Assessment Circle,
59, Taylors Road, Dowiath Tower, 7th Floor,
Kilpauk, Chennai - 600 010.

2.The Deputy Commissioner (CT),
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PAPJM Building,
Greams Road, Chennai - 600 006.

3.The Commercial Tax Officer,
Group - I, Enforcement (Central),
PAPJM Building,
Greams Road, Chennai - 600 006.

+1cc to Mr.P.Rajkumar, Advocate Sr.48237
+1cc to Special Government Pleader Sr.48177

W.P.Nos.27479 to
27483 of 2015
and
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and 1 of 2015

ad[co]
srg 30.09.2015