IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.2769 to 2775 of 2015
And
M.P.Nos.1 of 2015

Indus Teqsite Private Limited
Rep. by its Manager Finance
V.Venkata Subramanian
No.H-9 4th Main Road
SIPCOT IT Park
Siruseri, Chennai-603 103. ... Petitioner in all WPs.

Vs

The Commercial Tax Officer
Kodambakkam Assessment Circle
Chennai-6. ... Respondent in all WPs.

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records relating to the Assessment Order TIN 33571402883/ 2007-2008, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 respectively dated 28.11.2014 passed by the respondent, quash the same as arbitrary and illegal.

For Petitioner : Mr.C.Natarajan, Senior Counsel for Mr.Joseph Prabakar
For Respondent : Mr.V.Haribabu, GA(T)

C O M M O N O R D E R

The petitioner has come forward with these writ petitions challenging the orders dated 28.11.2014, relating to the assessment years 2007-2008 to 2013-2014.

2. The learned Senior Counsel for the petitioner submitted that the sum and substance of the grounds raised by the petitioner is that the impugned orders are illegal as the same are passed in gross violation of principles of natural justice, since the respondent has passed non speaking orders, without considering the documents filed by him and without affording an opportunity to him.

3. The learned Senior Counsel for the petitioner further submitted that a perusal of the impugned orders reveal that the respondent has confirmed the issue in question by stating that the petitioner has not disclosed each and every sale in the monthly return and in the absence of detailed documentary evidence, the reply was found unacceptable. However, he drew the attention of this Court to the the documentary evidence produced by the petitioner in support of his contention.

4. Further, the learned Senior Counsel for the petitioner relying on the decision of the Andhra Pradesh High Court in the case of Padmavathi Paddy and Rice Co. vs. Assistant Commissioner of Commercial Taxes, Anantapur and Another, wherein the Andhra Pradesh High Court has held as follows:-

> (i) that on the basis of the way bills which had not been brought into account, it was permissible for the Commercial Tax Officer to presume that not merely the turnover represented by the way bills but also other similar turnovers had escaped assessment and proceed to estimate what that quantum of turnover was;
>
> (ii) that section 14(1) does not however vest jurisdiction in the Commercial Tax Officer to arbitrarily determine the turnover when he finds that the return is incorrect or incomplete. He must make a genuine effort to estimate to the best of his judgment what the actual turnover of the assessee might have been. The section requires him to make an enquiry which necessarily postulates that he must take all the relevant factors into consideration in determining the turnover. At such an enquiry, the assessee must be given a reasonable opportunity to satisfy the Commercial Tax Officer that though the way bills found were not brought to account, there were other factors, which would to have been taken into account before arriving at a conclusion as t whether or not there was similar suppression;
>
> (iii) that as no such enquiry was made before making the best judgment assessment, the assessment was arbitrary and contrary to the provisions of section 14(1) of the Act".

submitted that personal hearing includes a detailed enquiry to be made before passing the order.

5. Heard the learned Senior Counsel for the petitioner and the learned Government Advocate (Taxes) for the respondent and perused the materials available on record.

6. As per Section 27 of Tamil Nadu Value Added Tax, 2006 (hereinafter referred to as the 2006 Act), an opportunity ought to have been given to the dealer before passing an order. Since the issue in question is an escaped turnover to be assessed under Section 27 of the 2006 Act, the petitioner ought to have been given a reasonable opportunity. However, having received the documentary evidence, without affording an opportunity of personal hearing, the authority passed the impugned orders dated 28.11.2014 relating to the assessment years 2007-2008 to 2013-2014, which are almost verbatim. In the assessment of the escaped turnover, the documentary evidence submitted by the petitioner has escaped the attention of the officer. Hence, I find force in the contention of the learned Senior Counsel for the petitioner that the impugned orders are passed without giving an opportunity to the petitioner.

7. Since the petitioner is entitled to get an opportunity of being heard in terms of Section 27 of the 2006 Act and taking note of the decision of the Andhra Pradesh High Court cited supra, the impugned orders dated 28.11.2014 are set aside and the respondent is directed to pass orders on merits and in accordance with law, after providing a reasonable opportunity of personal hearing to the petitioner, which includes a detailed enquiry to be made before passing an order.

8. Since there are 7 assessment years, it is open to the authority to fix different dates for personal hearing of the petitioner and direct the petitioner to appear on such dates and submit his objections and also explain through the documentary evidence filed by him. It is open to the petitioner to file further objections if any and also to file additional documents in support of his contention. On the specific dates to be allotted for personal hearing by the respondent, if the petitioner fails to avail the opportunity for any reason whatsoever, the authority is empowered to pass orders on merits and in accordance with law, without being influenced by the orders that are set aside by this Court.

These writ petitions are disposed of with the above direction. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CO)
Dt:12/2/2015

True Copy

Sub-Assistant Registrar

To

The Commercial Tax Officer
Kodambakkam Assessment Circle
Chennai-6.

+ 1 cc to Mr.Joseph Prabakar, Advocate SR 6261

+ 1 cc to the Spl.Govt.Pleader (T), SR 6138

ts(co)
prk17/2