IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.29070 to 29074 of 2015
and M.P.Nos.1 of 2015

Tvl. Deccan Alloys Pvt Ltd [Petitioner in all the WPs]
62 Spicot Industrial Complex Phase 1
Hosur-635 109 Repd. by its General Manager
Shri Gopala Krishnan

Vs

The Assistant Commissioner(CT)
Hosur (North) Assessement Circle
Hosur-635 109. [Respondent in all the WPs]

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified mandamus calling for the records of the Respondent in impugned revised assessment orders dated 20.08.2015 in VAT 33693320410/2009-10 to 2013-14 respectively relating to Assessment years 2009-10 to 2013-14 respectively and quash the same as illegal arbitrary and against the express provisions contained in the Tamil Nadu Value Added Tax Act 2006 in so far as having failed to provide opportunity of personal hearing and consequently direct the Respondent to provide an opportunity of personal hearing in order to substantiate the claim of the petitioner in proper manner as per the provisions of the Tamil Nadu Value Added Tax Act 2006.

For Petitioner : Mr.R.S.Pandiyaraj

For Respondents : Mr.S.Kanmani Annamalai, AGP (T)

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), who took notice for the respondent and with their consent, the writ petitions are taken up for disposal.

2.The writ petitions have been filed under Article 226 of the Constitution of India challenging the impugned revised assessment orders dated 20.08.2015 in VAT 33693320410/2009-10 to 2013-14 respectively and quash the same as illegal arbitrary and against the express provisions contained in the Tamil Nadu Value Added Tax

Act 2006 (hereinafter referred to as TNVAT Act), in so far as having failed to provide opportunity of personal hearing and consequently direct the Respondent to provide an opportunity of personal hearing in order to substantiate the claim of the petitioner in proper manner as per the provisions of the TNVAT Act.

3.1 The petitioner, being a dealer as defined under Section 2 (15) of the TNVAT Act is an assessee on the file of the respondent, holding a Tax Identification Number (TIN) 33693320410 and CST No.448040. The petitioner's accounts are being assessed by the respondent. The returns are duly filed with the statutory period along with all prescribed documents set out under the Act.

3.2 According to the petitioner, the petitioner Company is primarily engaged in the business of manufacturing Re-rolled products which comprises raw materials namely M.S.Billets/M.S.Ingots. The petitioner purchases raw materials within the State as well as from outside the State of Tamil Nadu. The petitioner also undertakes conversion job work.

3.3 Further, according to the petitioner, the business premises of the petitioner was subjected to field audit by the officials of the Enforcement Wing on 27.01.2014 and 29.01.2014, who impounded certain documents such as data register, stock book and balance sheets for the assessment years in question.

3.4 That apart, according to the petitioner, during the course of field audit, the officials, pointing out certain defects, prepared a unilateral report that the petitioner is not eligible to avail ITC as per Section 19(15) of the TNVAT Act, without considering the facts of the petitioner's case in a proper perspective. It is the contention of the petitioner that without affording reasonable opportunity to the petitioner to substantiate their claim with all documentary evidences, the Enforcement Wing Officers, arrived with the erroneous conclusion.

3.5 While that being the position, the respondent has issued notices dated 26.05.2015 to the petitioner to file its objections within fifteen days from the date of receipt of the said notices. On receipt of the same, the petitioner filed communications dated 08.06.2015, specifically requesting the respondent to furnish the cancelled dealers list involving ITC with a further request to grant 30 days time after furnishing the list in order to file necessary documents and objections in order to substantiate their claim.

3.6. However, to the shock and surprise of the petitioner, the respondent has passed orders dated 20.08.2015 for the assessment years in question, based on the unilateral report filed by the Enforcement Wing Officers.

Aggrieved over the same, the petitioner is before this Court.

4.1 The learned counsel for the petitioner submits that the impugned orders of assessment dated 20.08.2015 are against the principles of natural justice, inasmuch as no opportunity of personal hearing was afforded to the petitioner. Hence, the orders are liable to be quashed in toto under the legal dictum of audi alteram partem.

4.2 Further, according to the learned counsel for the petitioner, the respondent has failed to adhere with the Circular No.7 dated 03.02.2014 issued by the Commissioner (CT)/Principal Secretary and hence the impugned orders are liable to be set aside.

4.3 That apart, according to the learned counsel for the petitioner, the orders of the respondent is against the statutory provision as contemplated under the Act, which provides for grant of an opportunity of personal hearing prior to completion of any order passed by the assessing officer.

4.4. Besides, according to the petitioner, inspite of specific request made by the petitioner to furnish cancelled dealers list in order to file its objections, with a further request to grant 30 days time to file its objections, without considering the same, the impugned orders came to be passed, which is against the principles of natural justice.

Based on these, the learned counsel for the petitioner has sought for quashing of the impugned orders dated 20.08.2015.

5. The learned Additional Government Pleader (Taxes) would submit that the respondent may be directed to pass orders afresh after providing reasonable opportunity to the petitioner.

6. This Court considered the submissions made by the learned counsel on either side and perused the materials available on record.

7. Despite the Circular issued by the Principal Secretary/Commissioner of Commercial Taxes dated 03.02.2014, wherein, in paragraph 3 (b), it is specifically stated that no order should be made without affording an opportunity to the dealer, the respondent, has passed the impugned orders by observing that no opportunity of personal hearing be provided. This sort of practice adopted by the respondent cannot be countenanced. Since the issue relates to mis-matching of taxable turnover on the basis of documentary evidences, it is the bounden duty of the respondent to give due opportunity to the petitioner. But, despite specific request made by the petitioner to afford an opportunity of personal hearing, the same was rejected by the respondent. Hence, this Court is of the view that on the ground of violation of principles of natural justice, the impugned orders deserve to be set aside.

8. Accordingly, the impugned orders passed by the respondent dated 20.08.2015 are set aside. The petitioner is directed to appear before the respondent along with all documentary evidences within a period of ten days from the date of receipt of a copy of this order

and on such appearance, the respondent is directed to peruse all the documents, consider the objectivity filed by the petitioner and pass appropriate orders on merits and in accordance with law, within a period of four weeks thereafter.

The writ petitions are disposed of with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

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To
The Assistant Commissioner(CT)
Hosur (North) Assessement Circle
Hosur-635 109.

+3 ccs to Mr.R.S.Pandiyaraj, Advocate, sr.50367
+1 cc to Special Government Pleader, (Taxes) sr.50434

W.P.Nos.29070 to 29074 of 2015

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