

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.Nos.30333 to 30338 of 2015

and

M.P.Nos.1, 1, 1, 1, 1 & 1 of 2015

M/s.Birdge and Roof Company (India) Limited,

Rep. by its Authorised Signatory

Mr.Pranab Kumar Hans,

JVL Plaza, Second Floor,

No.626, Anna Salai,

Chennai-600 018.

..... Petitioner in all the above WPs

Vs.

1.The Assistant Commissioner (CT),

Tiruvottiyur Assessment Circle,

No.791, Thiruvottiyur High Road,

1st Floor, Chennai-600 019.

2.The Commercial Tax Officer, Group-I,

Central Enforcement Wing-I,

Greams Road,

Chennai-600 006.

..... Respondents in all the above 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 first respondent in TIN/33351100558/2008-09, 2009-10, 2010-11, 2011-12 2012-13 & 2013-14, respectively, and to quash the impugned revised orders dated 21.07.2015 pursuant to the unauthorized invalid Audit Wing Inspection Report and further, to direct the first respondent to pass orders in accordance with Section 5 r/w Rule 8(5) of the Tamil nadu Value Added Tax Act, 2006.

For Petitioner : Mr.V.Sundareswaran

For Respondents : Mr.S.Manoharasundaran, AGP (T)

COMMON ORDER

Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who took notice for the respondents and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed seeking for issuance of a Writ of Certiorari Mandamus to call for the records of the first respondent in TIN/33351100558/2008-09, 2009-10, 2010-11, 2011-12, 2012-13 & 2013-14, respectively, and to quash the impugned revised orders dated 21.07.2015, which were passed based on the Audit Wing Inspection Report and to direct the first respondent to pass fresh orders in accordance with Section 5 r/w Rule 8(5) of the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner is a Miniratna Company, having its registered office at Kolkatta. The petitioner-company is having its branches at various places in Tamil Nadu and is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and under the Central Sales Tax Act, 1956. The registration is taken for branches/worksites separately, but the returns are filed consolidated in Chennai before the 1st respondent. The petitioner is engaged mostly in 'civil works' and is filing the monthly returns regularly in Form-I before the 1st respondent, along with payment of admitted tax, on the turnover relating to the transfer of property involved in the execution of works/contracts. On the basis of the inspection conducted by the Enforcement Wing from 17.06.2014 to 26.08.2014, a proposal for assessment was made alleging suppression and accordingly, a notice dated 21.01.2015 was issued to the petitioner, for which the petitioner sought sufficient time to collect necessary documents and for filing final reply. The first respondent without considering the same passed the impugned orders dated 21.07.2015. Aggrieved over the same, the petitioner has come forward with the present writ petitions before this Court.

4. The learned counsel for the petitioner submitted that at the time of inspection, the petitioner produced certain documents and also filed a preliminary reply dated 28.08.2014; but, without considering the same, the impugned orders dated 21.07.2015 have been passed by the first respondent. According to the learned counsel for the petitioner, failure to consider the reply as well as documents submitted by the petitioner has resulted in violation of principles of natural justice. Hence, the learned counsel for the petitioner seeks for necessary relief.

5. The learned Additional Government Pleader supported the orders passed by the 1st respondent, on the ground that the

petitioner failed to file necessary reply in time.

6. I have heard the submissions made on either side and perused the materials available on record.

7. At the time of inspection conducted by the Enforcement Wing, the petitioner had produced certain documents and also filed a preliminary reply dated 28.08.2014, which is not denied by the respondents. But, the said documents and reply filed by the petitioner were not considered by the 1st respondent before passing the impugned orders dated 21.07.2015. Failure on the part the respondent in considering the reply as well as documents filed by the petitioner results in violation of principles of natural justice. Further, as the entire assessments are related to the consumption such as petrol, diesel, electrodes and cables for the use of the petitioner, necessary documents are to be verified by the 1st respondent. Despite the production of documents even before the Inspecting Officers, the same lost sight. In view of the same, the impugned orders are liable to be set aside.

8. Accordingly, the impugned orders are hereby set aside. The matter is remanded back to the first respondent for passing fresh orders. The petitioner is directed to file additional reply and documents, if any, before the first respondent, within a period two weeks, from the date of receipt of a copy of this order. On receipt of such reply/documents, the 1st respondent shall considered the same and pass necessary orders, after affording opportunity of personal hearing to the petitioner, within a period of six weeks thereafter.

9. It is brought to the notice of this Court by the learned counsel for the petitioner that subsequent to the impugned orders, the Bank Account of the petitioner was attached. Since the assessment orders have been set aside now, the attachment of the petitioner's bank account shall be lifted forthwith.

With the above terms, the writ petitions are ordered. No costs. Connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar

SSV

To

1.The Assistant Commissioner (CT),
Tiruvottiyur Assessment Circle,
No.791, Thiruvottiyur High Road,
1st Floor, Chennai-600 019.

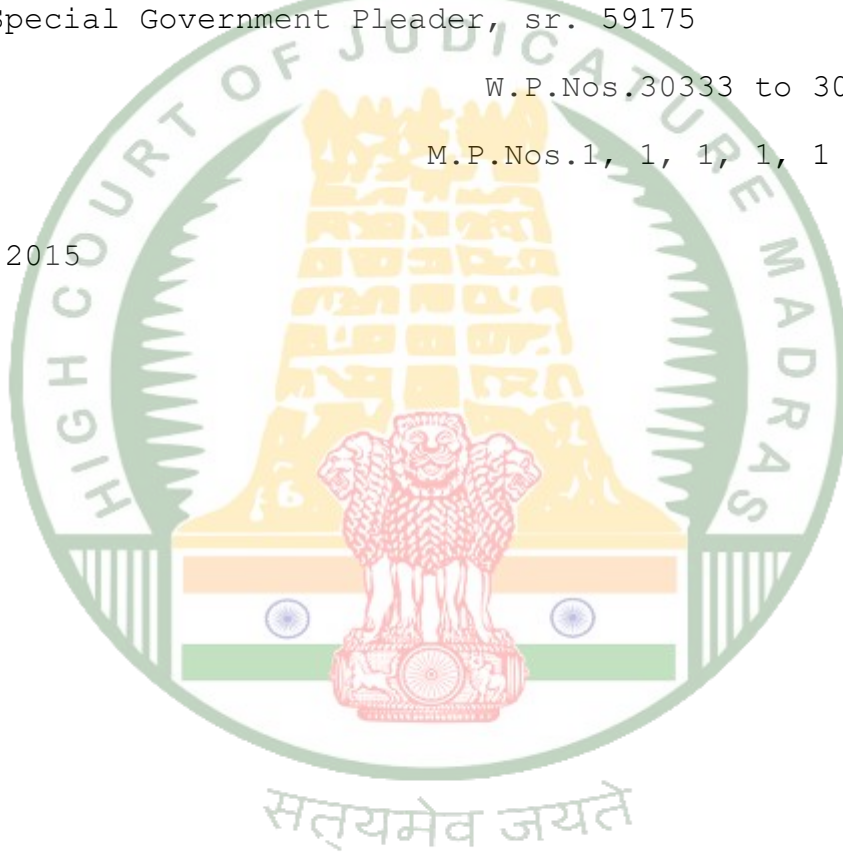
2.The Commercial Tax Officer, Group-I,
Central Enforcement Wing-I,
Greens Road, Chennai-600 006.

+1 cc to Mr.V.Sundareswaran, Advocate, sr.59382

+1 cc to Special Government Pleader, sr. 59175

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