IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2015

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.30896 to 30898 of 2015
and M.P.Nos.1 of 2015

Tvl. Sree Rajalakshmi Finance
Rep. by it Partner A. Venkatraman
323, Main Road, Shevapet, Salem. ... Petitioner in all WP's

Vs

The Assistant Commissioner (CT)
Gugai Assessment Circle Salem ... Respondent in all WP's

Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of certiorari calling for the records on the files of the Respondent herein in C.S.T No. 404315/2011-12, 2013-14 and 2012-13 respectively dated 7.9.2015 and quash the same.

For Petitioner : Mr.N.Inbarajan
For Respondent : Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N O R D E R

Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes), takes notice for the respondent and with their consent, the main writ petitions are taken up for disposal.

2.These writ petitions have been filed under Article 226 of the Constitution of India challenging the orders of the respondent dated 07.09.2015.

3. The petitioner, who is a registered dealer on the files of the respondent, are engaged in buying and selling of Sago and Starch. According to the petitioner, since the inter-state sales of Sago purchased from M/s Sago Serve, Salem, are eligible for exemption subject to the proof of certificate, they are claiming exemption with respect to the same and insofar as the other inter-state sales are concerned, they have been charged the concessional rate of tax, which was also paid by them. However, without calling for books of accounts and other documentary evidences, the such claim of exemption

made by the petitioner, the respondent initiated proceedings by issuing notices dated 04.06.2015, 05.06.2015 and 08.06.2015 for the assessment years 2011-12, 2013-14 and 2012-13 respectively, for disallowing the claim of exemption and also disallowing concessional rate of tax in respect of direct inter-state sales falling under Section 8(1) of the CST Act, 1956. According to the petitioner, as far as assessment year 2012-13 is concerned, the petitioner produced the details and the certificates along with the declarations, however, though revised notice dated 31.07.2015 was issued, disallowed the exemption in respect of sales out of purchases from Sago Serve.

4. It is the grievance of the petitioner that without granting sufficient time to file the certificates and documents, though they sought for extension of time by their letter dated 15.06.2015, the impugned orders dated 07.09.2015 were issued by the respondent, confirming the proposal dated 04.06.2015, 05.06.2015 and 31.07.2015. Aggrieved over the same, the petitioner is before this Court.

5. The learned counsel for the petitioner would submit that when the assessment was made under Section 22(4) of the VAT Act read with Section 9(2) of the CST Act, 1956, opportunity of being heard ought to have been provided by the respondent, before confirming the proposal. Hence, there is violation of principles of natural justice. Further, according to the learned counsel for the petitioner, when the petitioners are having the declarations and details relating to the purchases from M/s Sago Serve, Salem, without providing sufficient opportunity, the impugned orders came to be passed, which are not sustainable.

6. That apart, according to the learned counsel for the petitioner, Rule 12(7) of the CST (R&T) Rules, provides for filing of declarations even after the period prescribed under the Act and hence the respondent has the jurisdiction to consider the declaration so filed, however, the respondent has not provided such opportunity and therefore, there is non compliance of the said Rule by the respondent.

7. Be that as it may, the learned counsel for the petitioner submits that had the petitioner been granted some more time for production of declarations, the same would have been produced before the respondent and since the details are available and the declarations can be filed at any time, if an opportunity is granted, the entire demand of tax as per the impugned orders may not survive.

Based on the above, the learned counsel for the petitioner has sought for quashing of the impugned orders.

8. The learned Additional Government Pleader (Taxes), appearing for the respondent, on the other hand submitted that though sufficient opportunity was given, the petitioner did not produce the C Forms.

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

10. Considering the submissions made by the learned counsel on either side, since it is submitted that yet another opportunity may be given to the petitioner with respect to the claim of production of declaration forms alone, this Court is inclined to grant sufficient time to the petitioner for production of C forms.

11. In view of the above, by quashing the impugned orders dated 07.09.2015, this Court permits the petitioner to file C declaration forms before the respondent within a period of two weeks from the date of receipt of a copy of this order and on such production, the respondent is directed to consider the same and pass orders on merits and in accordance with law, within a period of four weeks thereafter.

The writ petitions are disposed of accordingly. No costs. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar(CO)
dt:08/10/2015

True Copy

Sub-Assistant Registrar

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To

The Assistant Commissioner (CT)
Gugai Assessment Circle Salem

+1 cc to Specila Government Pleader (Taxes) sr.53272
+3 ccs to mr.N.Inbarajan, Advocate sr.53007

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