IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM:

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.31758 to 31761 of 2015

and M.P.Nos.1 of 2015

Tvl.Flocan Systems (P) Ltd.,
Rep. by its Managing Director,
Pritpal Singh Hanjra,
No.288, Pappankuppam,
Gummidipoondi 601 201.

... Petitioner in all Writ Petitions

-Versus-

The Commercial Tax Officer,
Gummidipoondi Assessment Circle,
No.38, 2nd Floor, GNT Road,
Gummidipoondi 601 201.

...Respondent in all Writ Petitions

Prayer in W.P.No.31758 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST No.64329/2006-07 dated 14.07.2015 and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and for a consequential direction to the respondent to pass order after grant of notice and opportunity.

Prayer in W.P.No.31759 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST No.64329/2007-08 dated 15.07.2015 and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and for a consequential direction to the respondent to pass order after grant of notice and opportunity.

Prayer in W.P.No.31760 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST No.64329/2008-09 dated 15.07.2015 and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and for a consequential direction to the respondent to pass order after grant of notice and opportunity.

Prayer in W.P.No.31761 of 2015:- Writ Petition filed under Article 226 of the Constitution of India for the relief of issuance of Writ of Certiorarified Mandamus calling for the records on the file of the respondent in CST No.64329/2009-10 dated 15.07.2015 and to quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice and for a consequential direction to the respondent to pass order after grant of notice and opportunity.

For Petitioner(s)	:	Mr.R.Senniappan for Petitioner in all Writ Petitions
For Respondent(s)	:	Mr.V.Haribabu, AGP (T) for Respondents in all Writ Petitions

COMMON ORDER

Challenging the individual orders of assessment passed by the respondent in respect of assessment year 2006-2007, 2007-2008, 2008-09, 2009-10, the assessee company have come forward with these writ petitions.

2. Since the issue involved in these writ petitions is one and the same, they are taken up, heard together and they are disposed of by this common order.

3. The case of the petitioner company in brief is as follows:- The petitioner is an assessee under the respondent department and a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 and The Central Sales Tax Act, 1956. The petitioner was an assessee on the file of the Commercial Tax Department, Ponneri Assessment Circle, till September 2014 and thereafter the circle was transferred to Gummidipoondi w.e.f. September 2014 onwards. The original order of assessment up to 2013-14 under the Tamil Nadu Valued Added Tax Ace as well as Central Sales Tax Act, were assessed by the then Officer of the Ponneri Assessment Circle, however, the present officer, the respondent herein passed an order on 14.07.2015 in respect of assessment years from 2006-2007 and passed assessment orders dated 15.07.2015 in respect of assessment years 2007-08, 2008-09 and 2009-10 individually on the ground that the company had not filed the labour charges related documents and export details and therefore assessed the turnover at the rate of 12.5% which had been claimed as exemption by the petitioner. The impugned assessment orders have been passed even without pre-assessment notice and

without providing an opportunity for production of evidence in support of the claim for exemption with regard to labour charges and export sales.

4. The grievance of the petitioner is that had an opportunity been given, the petitioner company would have urged the authority on the claim for exemption of labour charges and export details. However, after the orders of assessment were being passed, the petitioner met the respondent in person and explained the position, but, the respondent did not at all prepare to accept the submissions of the petitioner and to revise the orders. Hence, these writ petitions.

7. It is the specific case of the petitioner that for the assessment years 2006-07, 2007-2008, 2008-09 and 2009-2010 even without serving any notice, the impugned orders of assessment came to be passed individually. For all these years, a dispute was raised with regard to the issue related to the labour charges and export details. It is specifically averred by the petitioner that all these years assessment orders came to be passed on the only ground that the petitioner did not file any document related to labour charges and export details and therefore, the assessing authority assessed the entire turnover at the rate of 12.5% which had been claimed as exemption by the petitioner.

8. Since the assessment orders impugned in these writ petitions came to be passed without discharging the statutory duty of issuing pre-assessment notice, the petitioner challenged the same by way of these writ petitions.

9. When this writ petition came up for admission on 07.10.2015, Mr.V.Haribabu, the learned Additional Government Pleader (Taxes) took notice for the respondent and sought time to get instructions from the respondent.

10. Today, when the writ petitions came up for hearing, on instructions, the learned Additional Government Pleader (Taxes) submitted that on the failure of the petitioner for production of necessary documents with regard to claim for exemption of labour charges and export sales, the assessment orders came to be passed. He also fairly admitted that no notice was given before passing such orders of assessment.

11. Having regard to the fair submissions made by the learned Additional Government Pleader and in order to give a quietus to the issue, this court is inclined to set aside the impugned orders of assessment. The impugned orders of assessment are accordingly set aside. The respondent is directed to issue appropriate notice within a period of two weeks from the date of receipt of a copy of this order. On receipt of such notice, the petitioner company shall submit

their objections along with relevant documents in support of their claim for exemption with regard to labour charges and export sales. On such filing of objections and documents, after due opportunity, necessary orders be passed on merits and in accordance with law. The said exercise shall be completed within a period of four weeks thereafter.

12. At this juncture, it is submitted by the learned counsel for the petitioner that subsequent to the orders of assessment, a communication was addressed to the bank vide communication dated 07.09.2015 thereby attaching the account operated by the petitioner company. Since the orders of assessment in question have been set aside, the bank attachment effected by the respondent by his communication dated 07.09.2015 are also directed to be raised.

13. The writ petitions are, accordingly, disposed of. No costs. Consequently, connected MPs are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

kmk

To

1.The Commercial Tax Officer, Gummidipoondi Assessment Circle, No.38, 2nd Floor, GNT Road,Gummidipoondi 601 201.

+1 cc to M/s.R.Senniappan, Advocate, sr.56965
+1 cc to The Special Government Pleader(Taxes), sr.56687

Writ Petition
Nos.31758 to 31761 of 2015

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