IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2015

CORAM:

THE HON'BLE MR. JUSTICE R.MAHADEVAN

W.P.Nos.34262 to 34268 of 2015
and M.P.Nos.1 of 2015

M/s.Design Centre
[Petitioner]
Rep. by its Managing Partner
No.12 T.V.Naidu Road
Off. Spur Tank Road Chetpet
Chennai-31. Petitioner in all the wps

Vs

The Commercial Tax Officer
Egmore Assessment Circle
Chetpet Chennai-31. Respondent in all the wps

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certirorarified mandamus to call for the records of the respondent in TIN No.33610541695/2008-2009 to 2014-15 respectively dated 31.8.2015, 02.09.2015, 02.09.2015, 10.09.2015, 10.09.2015, 10.09.2015 and 10.09.2015 respectively and quash the orders as illegal and direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representations dated 24.9.2015 and to revise the Assessment Orders under Section 84 of TNVAT Act as per the decision of the Madras High Court in W.P.Nos.16367 to 16372 of 2015.

For petitioner : Mr.C.Baktha Siromoni
For respondent : Mr.S.Kanmani Annamalai, AGP(T)

C O M M O N O R D E R

These writ petitions have been filed challenging the orders of the respondent dated 31.8.2015, 02.09.2015, 02.09.2015, 10.09.2015, 10.09.2015, 10.09.2015 and 10.09.2015 relating to the assessment years 2008-09 to 2014-15 respectively and to direct the respondent to pass fresh orders after giving an opportunity of personal hearing and to consider the representations dated 24.9.2015 and to revise the Assessment Orders under Section 84 of TNVAT Act as per the decision of the Madras High Court in W.P.Nos.16367 to 16372 of 2015.

2. The petitioner, being a registered dealer on the file of the respondent, is dealing in furniture and also undertakes works contract of designing partition false ceiling and interior decoration works, which forms part of civil works contract. The petitioner has filed monthly returns promptly every month electronically including the sale of furniture in this State and also the work contract turnover in Form I returns to the department and paid taxes every month promptly. On 09.12.2014, the place of business of the petitioner was audited by the Enforcement Wing Officials and based on their report, notices dated 22.07.2015 for the respective assessment years were issued proposing tax and penalty. The petitioner filed their detailed replies to the said notices on 13.08.2015, objecting the various issues on which tax was proposed by the respondent. The said replies were duly received by the respondent. However, the respondent, without considering the replies filed by the petitioner and without affording an opportunity of personal hearing as sought by the petitioner, confirmed the proposal by passing the impugned orders. Aggrieved over the same, the petitioner is before this Court.

3.1 The learned counsel for the petitioner submitted that on 22.07.2015 itself, the petitioner has requested the respondent to provide an opportunity to produce their books of accounts and offer explanations against the proposals. However, the respondent, though by letter dated 07.08.2015 has directed the petitioner to appear in person along with detailed reply and supportive documents on 13.08.2015 at 03.00 p.m., the said letter was received by the petitioner only on 10.08.2015. While that be so, on 13.08.2015, the petitioner filed their detailed replies. However, without properly considering the same, the impugned orders came to be passed, which are not sustainable.

3.2 It is the further contention of the learned counsel for the petitioner that the petitioner was not given an opportunity of being heard and therefore, the impugned orders are liable to be quashed.

3.3. Further according to the learned counsel for the petitioner, the petitioner, after receipt of the impugned orders, filed petitions under Section 84 of the TNVAT Act on 24.09.2015, for rectifying certain errors apparent on the face of the impugned orders and the same are kept pending. Hence, he would submit that it would suffice that the same may be directed to be considered by the respondent on merits.

4. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that since the petitioner has filed petitions under Section 84 of the TNVAT Act, a direction may be given to the respondent to consider the same and pass orders on merits and in accordance with law, within a specified period.

5. Heard both sides.

6. Admittedly, in response to the notices dated 22.07.2015, replies were filed by the petitioner on 13.08.2015, meeting out all the queries raised in the notices, which were duly acknowledged, which is evident from the typed set of papers. However, the impugned orders came to be passed, without considering the objections filed by the petitioner is the contention of the learned counsel for the petitioner.

7. Since the petitions under Section 84 of the Act are pending before the respondent and in view of the submission made by the learned counsel for the petitioner and in view of the submission of the Additional Government Pleader (Taxes) that a direction may be given to the respondent to dispose of the said petitions under Section 84 of the Act within a time frame, these writ petitions are disposed of by directing the respondent to consider and pass orders on the petitions filed by the petitioner on 24.09.2015 under Section 84 of the TNVAT Act, on merits and in accordance with law, after affording due opportunity to the petitioner. Such exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. No costs. Connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

True Copy

Sub Assistant Registrar

To
The Commercial Tax Officer
Egmore Assessment Circle
Chetpet Chennai-31.

+1 cc to Mr.C.Baktha Siromoni,Advocate(sr.58391)

W.P.No.34262 to 34268 of 2015

AR(II)
cp 30/10/2015