IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.36804 to 36810 of 2015

M/s.Annai Agencies
represented by its Proprietor
Chennai ... Petitioner in all WPs

Vs

1.The Appellate Deputy Commissioner (CT)
Chennai North Division,
III Floor, CT Annexe Building,
No.1, Greams Road, Chennai.

2.The Assistant Commissioner (CT)
Ponneri Assessment Circle,
Ponneri. ... Respondents in all WPs

Writ petitions filed under Article 226 of the Constitution of India for the issuance of writ of Certiorarified Mandamus, to call for the records in the impugned memos in N.Dis.Nos.1022/2015/A1, 1023/2015/A1, 1024/2015/A1, 1025/2015/A1, 1026/2015/A1, 1027/2015/A1 and 1028/2015/A1 respectively dated 05.10.2015, to quash the same and direct the first respondent to admit the appeals filed by the petitioner and to direct the second respondent to issue the final receipt for payment of 25% of the disputed tax.

For Petitioner : Mr.K.Vaitheeswaran
For Respondents : Mr.V.Haribabu,
Addl. Govt. Pleader

COMMON ORDER

By consent, all the writ petitions are taken up for final disposal.

2.The petitioner has filed the present writ petitions to quash the memos returning the appeal petitions filed by them against the assessment orders relating to the years from 2007-08 to 2013-14 and consequently direct the first respondent to entertain the same and direct the second respondent to issue final receipt for payment of 25% of the disputed tax.

3.According to the petitioner, the petitioner is a registered distributor of M/s.PEPSICO India Holdings Pvt. Ltd and duly filed its returns for the assessment years from 2007-08 to 2013-14. After scrutinising the same, the second respondent issued notices dated 4.4.2015 proposing to tax on discount received along with penalty and thereafter confirmed the same by assessment orders dated 31.07.2015 for the years in question. Aggrieved against the same, the petitioner preferred appeals before the first respondent. Though the petitioner remitted 25% of the disputed tax by way of demand drafts, which is a condition precedent for filing an appeal, the second respondent evaded to issue final receipt for payment of the same. Hence, the petitioner sought for further time. However, the first respondent, without granting further time, returned the appeal petitions filed by the petitioner for non-compliance of the defects pointed out by them. Therefore, the petitioner is before this court.

4.The learned counsel for the petitioner submitted that the second respondent Assessing Authority, without granting sufficient time to the petitioner to submit their reply to the notices and without providing an opportunity of personal hearing, straight away passed the assessment orders for the years in question. Similarly, the first respondent Appellate Authority, without properly verifying the documents filed along with the appeals and without granting further time for production of final receipt for payment of 25% of disputed tax, returned the appeal petitions filed by the petitioner. Such course adopted by the respondents 1 and 2 is arbitrary and in violation of the principles of natural justice. Hence, the learned counsel for the petitioner prayed for setting aside the impugned memos and direction to the respondents 1 and 2 for entertaining the appeals filed by the petitioner.

5.The learned Additional Government Pleader, who took notice for the respondents, on instructions fairly submitted that the demand drafts for payment of 25% of the disputed tax were produced by the petitioner and the final receipts for proof of the same are also given by the second respondent.

6.Heard both sides.

7.Admittedly, the Appellate Authority without granting further time to the petitioner, returned the appeals for want of proof for payment of 25% of the disputed tax. Such sort of practice adopted by the 1st respondent cannot be countenanced. It is the bounden duty of the Authorities to follow the procedure laid down under law before passing any orders and to verify the documents filed by the parties before entertaining or returning any petitions.

8.In view of the above and also in the light of the submission made by the learned Additional Government Pleader for the respondents, this Court is inclined to set aside the impugned memos issued by the first respondent. Accordingly, the same are set aside. The first respondent Appellate Authority is directed to entertain the appeals filed by the petitioner, if the same are otherwise in order and pass appropriate orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner.

9.All the writ petitions are disposed of accordingly. No costs.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Appellate Deputy Commissioner (CT)
Chennai North Division,
III Floor, CT Annexe Building,
No.1, Greams Road, Chennai.

2.The Assistant Commissioner (CT)
Ponneri Assessment Circle,
Ponneri.

+1 cc to Mr.K.Vaithesswaran Advocate sr.64451
+1 cc to Special Government Pleader sr.64769

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aa18/12/2015