IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.12.2015

CORAM:

THE HON'BLE MR. JUSTICE R. MAHADEVAN

W.P.Nos.38480 to 38484 of 2015
and M.P.Nos.1 of 2015

The Chennai Silks
74-C New Market Street
Tiruppur 641 604. [Petitioner in all the Petitions]

Vs

The Deputy Commissioner (CT)(FAC)
Fast Track Assessment Circle - II
Coimbatore.
[Respondent in all the Petitions

Writ Petitions filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records in respect of the impugned orders TIN 33022324637 / 15 - 16 (April-2015-August -2015) dated 05.11.2015 of the Respondent under the Tamil Nadu Value Added Tax Act 2006 and quash the same.

For petitioner : Mr.S.P.Asokan
For respondent : Mr.V.Haribabu, AGP

C O M M O N O R D E R

Heard the learned counsel appearing for the petitioner and Mr.V.Haribabu, learned Additional Government Pleader for the respondent and with their consent, the main writ petitions are taken up for disposal.

2. These writ petitions are filed under Article 226 of the Constitution of India challenging the orders in TIN 33022324637 / 15 - 16 (April-2015-August -2015) dated 05.11.2015 of the respondent under the Tamil Nadu Value Added Tax Act, 2006.

3. The petitioner is a registered dealer under the Tamil Nadu Value Added Tax Act, 2006 with TIN No.33022324637. It is the case of the petitioner that show cause notices dated 05.10.2015 were issued pointing out certain defects, for which detailed replies were filed on 29.10.2015. It is the further

case of the petitioner, the said notices dated 05.10.2015 were received only on 10.10.2015, which do not specify the time limit within which time, replies have to be submitted. Further, according to the petitioner, the replies dated 29.10.2015 were personally handed over to the respondent on 05.11.2015, which fact is evidenced by the signed acknowledgement given by the respondent in the letter delivery book of the petitioner. But, the impugned orders dated 05.11.2015 were received by the petitioner through post on 07.11.2015, in which there is no mention about the replies submitted by the petitioner and the respondent has simply stated that the dealers have not filed their objections so far and proved that they have no objections to offer. Hence, the petitioner is before this Court.

4. The learned counsel for the petitioner would submit that the impugned orders were passed in gross violation of principles of natural justice. According to him, had the respondent considered the objections filed by them, the respondent would have had no option except to drop the imposition of tax and penalty. That apart, according to him, the initial failure to state the time limit in the notices and the more serious mistake of passing impugned orders on a totally false statement that 15 days time limit was given in the said notices were undoubtedly fatal flaws that make the impugned orders absolutely untenable. Besides, according to him, passing impugned orders dated 05.11.2015, ignoring the replies received on that date is against all canons of justice, equity and good conscience. Further, the learned counsel for the petitioner strenuously contended that failure on the part of the respondent in not considering the replies filed by the petitioner, would amount to denial of fair opportunity to the petitioner to prove the correctness and completeness of the monthly returns filed by them.

Based on these, the learned counsel for the petitioner has prayed for allowing of the writ petitions.

5. The learned Additional Government Pleader has made his submissions supporting the impugned orders.

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

7. According to the learned counsel for the petitioner, objections dated 29.10.2015 were received by the respondent on 05.11.2015 and on the same date, the impugned orders came to be passed, which violates the principles of natural justice. The objections so filed by the petitioner were received by the office of the respondent on the same day itself viz., 05.11.2015 is evidenced by copy of the letter delivery book of the

petitioner enclosed in the typed set of papers. Hence, this Court finds force in the submission made by the learned counsel for the petitioner. Had the respondent considered the objections filed, the respondent might have dropped the imposition of tax, according to the petitioner. Hence, this Court is of the view that on the ground of denial of opportunity to the petitioner, the impugned orders are liable to be quashed and the matters have to be considered by the respondent afresh on the basis of the objections filed by the petitioner.

8. In the result, the impugned orders dated 05.11.2015 are set aside and the matters are remitted back to the respondent for passing orders afresh after considering the objections already filed by the petitioner and 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.

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

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To
The Deputy Commissioner (CT)(FAC)
Fast Track Assessment Circle - II
Coimbatore.

+1 cc to Special Government Pleader Taxes
sr.65646
+5 ccs to M/S.S.P.Asokan Advocate sr.65775

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