IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.02.2015

CORAM

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN

W.P.Nos.5249 & 5250 of 2015

M/s.Mobile Store Ltd.,
rep. by its Senior Manager .. Petitioner in both cases

Vs.

The Assistant Commissioner (CT),
Evening Bazaar Assessment Circle,
Chennai-600 001. .. Respondent in both cases

Prayer in both cases:- Writ Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records of the respondent in TIN 33090301130/2010-11 & 2009-10 and to quash the order dated Nil.12.2014 & Nil.01.2015 respectively passed therein.

For Petitioner in both cases: Ms.Hema Muralikrishnanan

For Respondent in both cases: Mr.Manoharan Sundaram AGP (T)

C O M M O N O R D E R

The Writ Petitioner has come forward with the aforesaid prayer.

2.The case of the petitioner is that the petitioner on receipt of notice, has submitted a reply and filed the document and obtained acknowledgment. In the impugned order, the authority has come to the conclusion that the petitioner has not produced any document. In support of his contention, learned counsel for the petitioner drew the attention of this Court to the copies of document filed by the petitioner and more particularly, the acknowledgment given by the authority and he also relied upon a decision of this Court in Amutha Metals v. Commercial Tax Officer, Mannady (East) Assessment Circle, Chennai reported in 2007 9 VST 478 wherein this Court has observed as follows:

> "In these two cases, it is accepted by the assessing officer that for a pre-revision notice, the petitioner has given objections. The objections have to be considered by the assessing officer on their own merits. However, the assessing officer proceeded to the effect that:
>
> "... Their objections were examined in detail. The dealers should have placed all the facts

> before the inspecting officials. But they did not do so. They had given an admitted statement to the effect that the purchases were made from unregistered dealers and sold and that they were not in a position to produce purchase bills. Inasmuch as they had admitted and even paid tax to some extent as per their statement now I find no reason to deviate from the proposals".

If the reasoning stated by the enforcement officials is taken as correct reason, there is no need for the assessing officer to be there to frame the assessment. The Enforcement Wing Officials themselves would have framed the assessment. Under the statutory provisions, it is expected from the assessing officer to consider the objections and either accept or reject the same by giving valid reasons by applying his mind. The above extract of the reasoning given by the assessing officer is nothing than desperation to pass an order on the basis of D3 proposal. There are ever so many cases where D3 proposals have been deviated by the assessing officer after applying their mind. Hence, this Court is of the view that the assessment orders are passed without considering the objections and by taking note of the D3 proposal of the enforcement officers. Therefore, the orders of assessment have to be set aside and the same are set aside. The assessing officer is directed to consider each one of the objections raised by the petitioners and give reason, except the reason that they have admitted before the Enforcement Officer and given statement before them with reference to the material made available and with reference to their accounts..........."

3.Learned counsel for the respondent is unable to refute the contention of the petitioner. Hence, the impugned orders are set aside and the matter is remitted to the original authority. Accordingly, the writ petitions are allowed. No costs. Consequently, connected M.Ps are closed.

4.Considering the case of the petitioner, the respondent is directed to pass orders on merits and in accordance with law, after giving an opportunity of personal hearing to the petitioner on 24.03.2015. If the petitioner fails to avail the opportunity of personal hearing on 24.03.2015, the respondent is at liberty to pass orders on merits in the manner known to law.

Sd/-
Assistant Registrar
Dated:9.3.15

True Copy

Sub Assistant Registrar

To

The Assistant Commissioner (CT),
Evening Bazaar Assessment Circle,
Chennai-600 001.

+1 cc to Spl.Government Pleader,T,SR.11120

+1 cc to M/s.L.Muralikrishnan, Advocate,SR.10832.

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krd 12/3