BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**15.10.2015**

CORAM

THE HONOURABLE **MR.JUSTICE R.SUBBIAH**

W.P(MD).Nos.18954 to 18957 of 2015
and
M.P(MD)Nos.1 & 2 of 2015

M/s.Ambal Granites and Marbles,
Represented by its Partner Sureshkumar,
25/7-C, Sungann Kadai(Post),
Thottiodu, Nagercoil,
Kanyakumari District. ...Petitioner in all W.Ps

Vs.

1.The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay.

2.The Commercial Tax Officer – III,
Enforcement Wing,
Commercial Tax Buildings,
Tirunelveli. ...Respondents in all W.Ps

COMMON ORDER: This Writ Petition has been filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in TIN No.33906163025/2010-11, 2011-12, 2012-13, 2013-14, dated 28.05.2015 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondents to pass assessment order afresh after furnishing the statement obtained by the second respondent from the petitioner on 21.01.2014 by considering the reply dated 30.05.2015 filed by the petitioner and after furnishing the copies as required by the petitioner within such time as may be directed by this Court.

For Petitioner : Mr.B.Ramkumar for
Mr.S.Karunakar
(In all W.Ps)

For Respondents : Mr.R.Karthikeyan
Additional Government Pleader
(In all W.Ps)

COMMON ORDER

The Writ Petitions have been filed praying for a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in TIN No.33906163025/2010-11, 2011-12, 2012-13, 2013-14, dated 28.05.2015 and to quash the same as illegal, arbitrary and in violation of the principles of natural justice and direct the respondents to pass assessment order afresh after furnishing the statement obtained by the second respondent from the petitioner on 21.01.2014 by considering the reply dated 30.05.2015 filed by the petitioner and after furnishing the copies as required by the petitioner within a stipulated time.

2. Mr.R.Karthikeyan, learned Additional Government Pleader takes notice for the respondents.

3. By consent, the Writ Petition itself is taken up for final disposal.

4.The case of the petitioner Concern is that they are a dealer in Granites and Marbles. They purchase goods from the registered dealers within the State and from other States and sell the same all over India. They are regularly filing the monthly returns in Form I and paying tax under Section 3(2) of the TNVAT Act. The petitioners were originally assessed under Section 22(2) of the TNVAT Act by accepting the returns under deemed assessment. Based on the inspection conducted, the respondent had issued a pre-revision notice, dated 17.11.2014 for the assessment years from 2010-2011 to 2013-14 in which it was stated that the petitioner's place of business was inspected by the enforcement wing on 20.01.2014 and 21.01.2014 and VAT audit conducted on 17.02.2014. During inspection, the enforcement wing officers had noticed some purchase omission and sales suppression. Based on the above inspection report, the respondent had stated that the monthly returns filed by the petitioner is incorrect and incomplete, it is proposed to assess under Section 27(1) of the TNVAT Act. On receipt of the said notice, dated 17.11.2014, the petitioner had filed his representation, dated 11.12.2014 requesting 15 days time to file a reply. The respondent had mainly relied on the inspection report dated 20.01.2014 and 21.01.2014 in his proposal. But the same was not served to the petitioner. In order to give an effective reply, the petitioner had approached the second respondent herein to furnish the copy of the inspection report. But the enforcement authorities had not turned up to the request made by the petitioner. Thereafter, the petitioner had filed a reply, dated 26.12.2014, before the first respondent requesting to furnish a copy of the inspection report. In the meanwhile, the first respondent had issued a revised pre-revision notice, dated 22.12.2014 wherein certain proposals were made on the basis of the inspection conducted on 17.12.2014. But in the said pre-revision notice, dated 22.12.2014 there was no reference as to the inspection conducted on 20.01.2014 and 21.01.2014. The first respondent had mainly relied on the pre-revision notice, dated

22.12.2014 that there was a stock difference which was noted at the time of inspection, dated 17.12.2014. But it is pertinent to note that the respondents had admitted the fact of inspection conducted at the petitioner's premises on 20.01.2014 and 21.01.2014 which was prior to the inspection dated 17.02.2014. If that is the case of the respondents, then it is the duty of the respondents to furnish the copies of the same. The above inspection was very crucial in this case, because of the reason that the first respondent had mainly relying on the stock difference found on 17.02.2014. But the first respondent had not stated anything about the stock taken on 20.01.2014 and 21.01.2014. The actual stock difference can only be ascertained when the inspection report, dated 21.01.2014 was furnished to the petitioner. Though the first respondent had issued a revision notice, dated 17.11.2014 by taking into account of the inspection conducted on 20.01.2014 and 21.01.2014, he had conveniently omitted to mention about the above fact of inspection and issued a revised pre-revision notice, dated 22.12.2014. The petitioner had sent his objection on 30.05.2015 wherein he had elaborated the factual aspects and pleaded his inconvenience to file a full-fledged reply in the absence of report on the inspection conducted at the petitioner's premises on 20.01.2014 and 21.01.2014 and he requested the first respondent to furnish the same enabling the petitioner to file effective reply. But to the shock and surprise of the petitioner, he had received the impugned order, dated 28.05.2015 only on 12.06.2015, wherein the first respondent had confirmed his proposal, dated 22.12.2014 without even considering the request of the petitioner, which is highly illegal and clear violation of the provisions under Section 27 of the TNVAT Act. Hence, challenging the said order, the petitioner has come forward with the present Writ Petition.

5. The only submission made by the learned counsel for the petitioner is that in spite of making representation by the petitioner, the first respondent has not chosen to furnish a copy of the inspection report recorded by the enforcement wing dated 20.01.2014 and 21.01.2014 and due to the non-furnishing of the said report, the petitioner was not in a position to give a reply. Therefore, there is clear violation of principles of natural justice. Hence, the matter may be remitted to the first respondent for fresh consideration.

6. The learned Additional Government Pleader vehemently opposed the request of the petitioner.

7. Considering the facts and circumstances of the case, this Court passes the following order:-

> The petitioner firm is directed to remit 25% of the disputed tax in question to the respondent within a period of two weeks from the date of receipt of a copy of this order. On such payment, the order impugned in the Writ Petitions shall stand set aside and the first respondent is directed to

provide an opportunity of personal hearing and pass appropriate orders, on merits and in accordance with law, within a period of four weeks, thereafter.

With the above direction, the Writ Petitions stand disposed of. No costs, consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1.The Commercial Tax Officer,
Thuckalay Assessment Circle,
Thuckalay.

2.The Commercial Tax Officer – III,
Enforcement Wing,
Commercial Tax Buildings, Tirunelveli.

+4cc to Mr.S.Karunakar, Advocate Sr.No.61533
+1cc to The Special Government Pleader SR.No.61683

akm/29.10.2015 /4p-8c/

W.P(MD)Nos.18954 to 18957 of 2015
15.10.2015