BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2015

CORAM

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

Writ Petition(MD).Nos.19316 to 19321 of 2015
and M.P.(MD).Nos.1 and 2 of 2015

Tvl.Fort System Services,
Represented by its Partner: S.Rajarajan
No.77 Vakkil New Street,
Madurai-625 001. ... Petitioner in all W.Ps

Vs

1.The Secretary to Government,
Department of Commercial Taxes,
Government of Tamil Nadu,
Secretariat, Fort St. George,
Chennai.

2.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of
Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

3.The Assistant Commissioner (CT)
West Tower Street Circle,
Commercial Taxes Buildings,
Dr.Thangaraj Salai,
Madurai 625 020. ... Respondents in all W.Ps

COMMON PRAYER: Writ Petitions are filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified calling for the records pertaining to the impugned proceedings of the third respondent in TIN No.33864801846/2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14, dated 05.10.2015 and quash the same.

For petitioner in all W.Ps : Mr.B.Rooban
For Respondents in all W.Ps : Mr.R.Karthikeyan
Addl. Govt. Pleader

COMMON ORDER

The prayer in the Writ Petitions are for issuance of a Writ of Certiorarified to call for records pertaining to the impugned proceedings of the third respondent in TIN Nos.33864801846/2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14, dated 05.10.2015 and quash the same.

2.Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

3.The petitioner is a dealer in Computer Systems and its parts and accessories and is an assessee on the file of the third respondent under the Tamil Nadu Value Added Tax Act, 2006. For the subject assessment years, the petitioner reported a total and taxable turnover of Rs.1,57,40,500/- in their regular monthly returns and duly accounted the same in their accounts and also reported it to the department and paid tax as required under Section 3(3) of the Tamil Nadu Value Added Tax Act, 2006 through their monthly returns in Form-I and for the subject assessment years, their assessment has been completed on deemed basis as per Section 22(2) of the Tamil Nadu Value Added Tax Act, 2006.

4.Further, the petitioner's place of business was audited by the Enforcement Wing Officials on 23.03.2015 and at the time of audit, the Enforcement Wing Officials based on the annual cross-verification in Internet Website proposed to arrive the alleged difference in purchase by mechanically comparing the petitioner's Annexure-I with the Annexure-II of other end dealers' Form-I monthly returns, but, without providing the copies of the same and thereby proposed to reverse the corresponding Input Tax Credit and immediately at the time of audit itself, the petitioner informed to the Auditing officials that their entire purchase and sales are duly accounted and covered by valid Tax Invoices and also reported to the department then and there and hence, there is no possibility for such difference and so they requested them to provide the copies of bill-wise and dealer-wise invoice particulars, invoice copies, return copies of other end dealers, based on which the auditing officials proposed to arrive such difference and they also informed that if those documents are produced as requested above, they can establish the same with connected documentary evidence. But, the Auditing Officials has failed to do so and they never furnished the documents as requested by the petitioner so far.

5.Whileso, the third respondent issued notices in Asst.No. 33864801846/2008-09, 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14, dated 11.09.2015 which was served to the petitioner on 17.09.2015 at 8.45 p.m., by the Office Assistant of the third respondent, wherein, he has simply proposed to reverse the Input Tax Credit and to levy penalty under Section 27(4) of the Tamil Nadu Value Added Tax Act, 2006, based on the report of the audit conducted by the Enforcement Wing Officials on 23.03.2015, he has been granted 15 days time to file the objections from the date of receipt of the notice.

6.The petitioner received the above said notice on 17.09.2015, which was also admitted by the third respondent at page No.3 of the impugned order itself and so from there, the petitioner is having 15 days time to file his objections ie., the petitioner is having time till 02.10.2015 for filing his objections. But, since 02.10.2015, is a Government Holiday on account of Gandhi Jayanthi and 03.10.2015 and 04.10.2015 falls on Saturday and Sunday, being Government Holidays, on 05.10.2015 the petitioner met the third respondent in person and requested him to provide the documents as requested by them at the time of Audit itself and based on which, he has proposed to reverse their Input Tax Credit and since he has issued the notices for the six assessment years at a time, after providing those documents, he has requested to grant 30 days time for filing their effective objections. But, the third respondent has refused to accept the said adjournment request letter and the third respondent replied that he has passed the order dated 05.10.2015 by confirming his proposal and the said order was served to the petitioner on 06.10.2015. Aggrieved over the same, the present writ petitions have been filed.

7.The learned counsel for the petitioner submitted that the order of impugned herein is in violation of principles of natural justice. Since 02.10.2015 is a Government Holiday on account of Gandhi Jayanthi and 03.10.2015 and 04.10.2015 falls on Saturday and Sunday being Government Holidays and on 05.10.2015, the petitioner met the third respondent in person and requested him to provide the documents. Without considering the petitioner's request, immediately impugned order has been passed, which is on violation of principle of natural justice.

8.Considering the above submissions, this Court is constrained to pass the following order;

(I) the impugned order passed by the third respondent dated 05.10.2015 is set aside and remitted back to the third respondent for fresh consideration;

(ii)the third respondent is directed to provide all the necessary documents as requested by the petitioner within a period of one week from the date of receipt of a copy of this order and on receipt of such documents, the petitioner is directed to file the objections within a period of two weeks thereafter and the third respondent is directed to pass appropriate orders by affording an opportunity to the petitioner within a period of four weeks thereafter.

With the above directions, the writ petitions are disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(R)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government, Department of Commercial Taxes,
Government of Tamil Nadu, Secretariat, Fort St. George, Chennai.

2.The Commissioner of Commercial Taxes,
O/o.The Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai-600 005.

3.The Assistant Commissioner (CT), West Tower Street Circle,
Commercial Taxes Buildings, Dr.Thangaraj Salai, Madurai 625 020.

+6cc to Mr.B.Rooban, Advocate Sr.No.63216 to 63220 and 63324

akm/19.11.15 /3p-10c/ Writ Petition (MD) Nos.19316 to 19321 of 2015
27.10.2015