IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 08.06.2016
Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos.13067 to 13073 of 2015
and
M.P.Nos.1 of 2015 (7 in nos.)

M/s. Sri Krishna Electricals Corporation,
rep. by R.Bhavana, Proprietrix
4/20, Omalur Main Road,
Salem.636 004 ..Petitioner in all the WPS

Vs.

The Assistant Commissioner (CT)
Arisipalayam Circle, Salem.636 007 ...Respondent in all the WPS

Prayer in all the WPS:- Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari to call for records from the files of the respondent in TIN : 33202840481/2007-08, 33202840481/2008-09, 33202840481/2009-10, 33202840481/2010-11, 33202840481/2011-12, 33202840481/2012-13,& 33202840481/2013-14, dated 07.04.2015, respectively and to quash the same as being contrary to the principles of natural justice, illegal etc.,

For Petitioner in all W.Ps. : Mr.C.Venkataraman

For Respondent in all W.Ps. : Mr.S.Manoharan Sundaram
Additional Government Pleader

COMMON O R D E R

The petitioner, who is a registered dealer, under the provisions of Tamil Nadu Value Added Tax Act, 2006 (hereinafter, referred to as 'the TNVAT Act') has come forward with these Writ Petitions, challenging the notices, dated 07.04.2015, which are notices, calling upon the petitioner to appear for personal hearing, pertaining to the completion of the assessment for the assessment years 2007-08 to 2013-14.

2. Heard Mr.C.Venkataraman, the learned counsel appearing for the petitioner, and Mr.S.Manoharan Sundaram, learned Additional Government Pleader, for respondents.

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3. At the first blush, it would appear, as to how the Writ Petitions are maintainable, since the impugned proceedings are just notices, calling upon the petitioner to appear for personal hearing, but, on a closure scrutiny of the same, it is evidently clear that the respondent has pre-decided, and, prejudged the matter.

4. The show causes notices were issued, for all the assessment years, dated 27.02.2015, stating that the petitioner's place of business was inspected by the Officials of Enforcement Wing on 06.07.2014 and 07.06.2014, and during the course of inspection, certain defects were noticed, and a report was submitted by the Enforcement Wing Officials, based on which, the respondent/Assessing Officer propose to revise the assessment for all the aforesaid years, under Section 27 (2) of the TNVAT Act, and determined the tax due on reversal of input tax credit (ITC). Objections were invited from the petitioner to the said proposals. The petitioner submitted their objections on 26.03.2015, pointing out several issues on the merits of the proposal, and also requesting for an opportunity of personal hearing. On receipt of the objections, what the Assessing Officer was required/expected to do was to call upon the petitioner for personal hearing, or to direct the petitioner to produce documents in support of their claim, and with due application of mind, to take an independent decision in the matter, and not solely be guided by the report filed by the Officials of the Enforcement Wing.

5. Unfortunately, in the instant cases, the Assessing Officer has put the cart before the horse by pre-deciding the matter, and rejected the petitioner's objections as unacceptable, yet, directed the petitioner to appear for personal hearing. The Assessing Officer, having rejected the petitioner's objections as unacceptable, no point would lie in calling upon the petitioner to appear before him, as no useful purpose would be served in doing so, as the Assessing Officer has already foreclosed the issue. Therefore, the petitioner was justified in approaching this Court challenging the impugned notices.

6. In the light of the above, the Writ Petitions are allowed, the impugned orders/notices are set aside, and the matters are remanded to the respondent for fresh consideration. In the event, the same Assessing Officer is still continuing to hold the post of the Assistant Commissioner (CT) Arisipalayam Circle, Salem 636 007, in order to ensure that the petitioner gets a fair and unbiased hearing, the said Officer should recuse himself from the proceedings, and the matter should be entrusted to some other Officer of equivalent cadre in the same circle. If the Officer, who issued the impugned notices, has already been transferred, then, the present incumbent, holding the said aforesaid post shall decide the issue without being influenced by any of the observations made in the impugned notices, which have been quashed by this Court.

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The petitioner is entitled to an opportunity of personal hearing, in which, they are entitled to produce documents to establish their stand, which shall be considered by the concerned Officer, and a speaking order shall be passed on merits and in accordance with law. Consequently, connected Miscellaneous Petitions are closed. No costs.

Sd/-
Asst.Registrar (CS V )

/true copy/

Sub Asst. Registrar

sd

To

The Assistant Commissioner (CT)
Arisipalayam Circle, Salem 636 007

1 cc to Mr.C. Venkatraman, Advocate, Sr. 30484
1 cc to Spl.Government Pleader (Taxes), Sr. 30758

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