IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.11.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.13795 & 13796 of 2015 &
MP Nos. 1 & 1 of 2015

M/s Skyline Hardware Trading Pvt.Ltd.,
rep. by Director
.. Petitioner in both W.Ps.

Vs

1 The Assistant Commissioner(CT)
Broadway Assessment Circle
Chennai 600 001.

2 The Assistant Commissioner (CT)
Harbour IV Assessment Circle
Chennai 1.
.. Respondents in both W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the impugned proceedings of the first respondent in Rc.Nos./333910061477/2012-2013 & 2013-2014, respectively and quash the impugned order dated 13.4.2015 as the same has been passed without providing for the documents and opportunity requested by the petitioner in its reply letter dated 9.4.2015 and also in violation of principles of natural and also contrary to the provisions of the TNVAT Act and against the law laid down by this Court in the case of M/s Jinsasan Distributors V. CTO, Chintradripet Assessment Circle, Chennai reported in 59 VST 256.

For Petitioner : Mr.P.Rajkumar

For Respondents: Mr.S.Kanmani Annamalai
Addl.Govt.Pleader

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai learned Additional Government Pleader appearing for the respondents. By consent, the Writ Petitions are taken up for disposal.

2.In these Writ Petitions, the petitioner-Company, who is registered dealer on the file of the first respondent has challenged orders of assessment for the years 2012-2013 & 2013-2014. Though elaborate submissions were advanced by the learned counsel appearing on either side and this Court heard the submissions made by the learned counsels, perused the typed set of papers as well as the counter affidavit filed on behalf of the respondents, it would not be necessary to go into the factual aspects, since fundamental error has crept in the proceedings which would vitiate the impugned assessment orders.

3.The then Assessing Officer had issued two notices dated 18.10.2013 and 23.10.2013, alleging that the petitioner has effected purchases of goods from the Registration Cancelled Dealers and they were called upon to produce the documents such as Purchase and Sales Bills, Bank Statements, Proof of movement of goods etc. The petitioner sent their explanation dated 25.10.2013, after which one more notice dated 06.12.2013 was issued to the petitioner, in which, there was a proposal to cancel the petitioner's Registration as a dealer. Stating that the petitioner has not given any reply to the notice dated 06.12.2013, the first respondent passed an order on 21.12.2013, confirming the proposal and cancelled the petitioner's Registration Certificate. The said order was put to challenge by the petitioner in W.P.No.350 of 2014, which was allowed by this Court by an order dated 24.09.2014. As the petitioner's Registration was not restored, the petitioner initiated Contempt Proceedings and only thereafter, the Registration was restored. Thereafter, the petitioner was issued with notices of personal hearings on 02.03.2015, 11.3.2015 and 30.03.205. Though the petitioner appeared for personal hearings and submitted their reply on 10.04.2015, no proposal was made by the respondents as to on what grounds the respondents proposed to revise the total and taxable turnover of the petitioner for those two years. In other words, the entire proceedings which culminated in the impugned orders were initiated pursuant to the order dated 21.12.2013, which was an order cancelling the petitioner's Registration Certificate. As noted above, the order dated 21.12.2013 was set aside by this Court by an order dated 24.09.2014. Thus, it is clear that prior to revising the taxable turnover for the relevant years, there was no show cause notice proposing to revise the turnover. Therefore, the fundamental error committed at the very inception has continued, resulting in an arbitrary order being passed. Further, in the impugned orders, the respondents have taken a stand that details sought for by the petitioner cannot be furnished.

4.The stand taken by the first respondent is incorrect, because when the petitioner is confronted with the allegation that they are a Bill Trader and transactions are not genuine, the basis of the allegations should be furnished. If information is culled out from the Departmental web-site, then all relevant particulars should be furnished to the petitioner. Without doing so, if the petitioner is called upon to give an explanation, it can never be an effective explanation and if orders are to be passed pursuant to the said explanation, then the said order will be vitiated for violation of principles of natural justice. The above reasons are sufficient to hold that the impugned orders are not sustainable in law.

5.Accordingly, the Writ Petitions are allowed and the impugned orders are set aside. The matter is remanded to the first respondent for fresh consideration. The first respondent shall issue fresh show cause notices, giving full particulars, pertaining to all the allegations against the petitioner and grant sufficient time for submitting objections and after affording an opportunity of personal hearing, redo the assessments in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

1 The Assistant Commissioner(CT)
Broadway Assessment Circle
Chennai 600 001.

2 The Assistant Commissioner (CT)
Harbour IV Assessment Circle
Chennai 1.

+1cc to M/S.P.Rajkumar, Advocate Sr.65129
+1cc to the Government Pleader SR.64783

W.P.Nos.13795 &13796 of 2015

cnr[co]
srg 10/12/2016