IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2016

CORAM

THE HON'BLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.14633 and 14634 of 2016
and
W.M.P.Nos.12797 and 12798 of 2016

M/s.ICEWAR AGENCIES,
rep by its Partner,
No.5, Venkatachalapuram,
Udumalpet Road,
Pollachi-642 001. .. Petitioner in both petitions

Vs.

Assistant Commissioner (CT), (FAC)
Pollachi East Assessment Circle,
Pollachi,
Coimbatore District. .. Respondent in both petitions

Both the writ petitions are filed under Article 226 of the Constitution of India praying for the issue of a writ of certiorarified mandamus to call for the records of the respondent and quash the assessment proceedings in TIN 33862262871/2012-13, dated 14.01.2016 and in TIN 33862262871/2013-14, dated 14.01.2016 and to direct the respondent to pass fresh orders by providing an opportunity of personal hearing to the petitioner as provided under Section 22 (4) of TNVAT Act

For Petitioner : Mr.C.Baktha Siromoni
For Respondent : Mr.Manokaran Sundaram, AGP

COMMON ORDER

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader, appearing for the respondent. With the consent of either side, these writ petitions themselves are taken up for disposal.

2 The petitioner is engaged in sale of packaged drinking water and soft drinks and it is registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act) and also the Central Sales Tax Act, 1956 (CST Act). In these writ petitions, the petitioner has challenged the orders of assessment for the years 2012-13 and 2013-14.

3 The primary ground, on which the impugned order is challenged, is that for both assessment years, the assessment has been made under Section 22(4) of the TNVAT Act. However, the petitioner has not been granted an opportunity of personal hearing. Therefore, it is submitted that the entire proceedings are vitiated. In support of his contention, the learned counsel for the petitioner referred to a decision of the Hon'ble First Bench of this court in SRC Projects Private Limited Vs. Commissioner of Commercial Taxes, Chennai and another[1]. The learned counsel also referred to a circular issued by the Commissioner, dated 20.04.2001.

4 The other ground raised by the petitioner is that after they received the pre-assessment notice dated 23.10.2015, proposing to revise the turnover, the petitioner submitted individual representations for both years dated 16.11.2015. In the said representations, the petitioner stated that the assessing authority should furnish details and after furnishing details and after affording an opportunity to the dealer, the assessing authority should take action in the matter. In this regard, the petitioner has sought for production of the following documents:

> "(1) Pollachi Enforcement Wing, Commercial Tax Officer's report in VSI 3 No.48/2015-16 dated 07.10.2015.
> (2) Details of alleged sales reported by the sellers as Rs.63,06,140/- in Annexure-II for the year 2012-13 as follows:
> (i) Sale Bill No. & Date
> (ii) Sale value and gross value
> (iii) Commodity sold by the vendors to us as per their annexure-II with commodity Code No.
> (iv) VAT tax charged in the sales by the vendors for the alleged sales for the year 2012-13."

Though such representation was made by the petitioner, the assessing authority, having not granted any opportunity of personal hearing, did not take into consideration the request made by the petitioner.

1 [2010] 33 VST 333 (Mad)

5 In the light of the above, the Hon'ble First Bench in the case of SRC Projects Private Limited, held that in a case where the question involved was one of determination of certain factual disputes which were a bit complex and not free from controversy, the principles of fairness would encompass personal hearing within the concept of "reasonable opportunity to show cause".

6 However, in the case on hand, in terms of proviso under Section 22(4) of the Act, it is mandatory that an opportunity of being heard should be provided before taking an action under Section 22(4) of the Act. Therefore, the impugned orders of assessment call for interference.

7 Accordingly, both the writ petitions are allowed and the impugned orders are set aside. The respondent / assessing officer is directed to consider the petitioner's representations dated 16.11.2015 and provide documents sought for. If in the event documents are not available or for some other reason, they cannot be provided, then the assessing officer should intimate the assessee the reasons thereof, after which the petitioner is entitled to submit his objections to the proposal and after affording an opportunity of personal hearing to the petitioner, the respondent is directed to complete the assessment on merit and in accordance with law. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

vvk
To
Assistant Commissioner (CT), (FAC)
Pollachi East Assessment Circle,
Pollachi, Coimbatore District.

+1cc to the Special Government Pleader, S.R.No.32580

RSI(CO)
EU(12/07/2016)

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