IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 06.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.18895 to 18899 of 2016
&
W.M.P.Nos. 16490 to 16494 of 2016

M/s. Sun Paper and Stationeries
Rep by its Partner
No.42 Malaya Perumal Street
Chennai-600 001. ... Petitioner in all WPs

Vs

The Commercial Tax officer
Kothawalchavadi Assessment Circle
Wawoo Mansion,
Chennai-600 001. ... Respondent in all WPs

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of certiorarified mandamus to call for the records of the respondent in his proceedings in TIN NOs.33250200841/ 2007-08; 33250200841/ 2008-09; 33250200841/ 2009-10; 33250200841/ 2010-11 & 33250200841/ 2013-14 dated 29.01.2016 and quash the orders passed therein and to direct the respondent to pass revised orders by adopting the correct rate of tax as per Section 3(4) of TNVAT Act after providing an opportunity of personal hearing to the petitioner.

For Petitioner : Mr.C.Bakthasiromoni

For Respondents : Mr.Manokaran Sundaram
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.C.Bakthasiromoni, learned Counsel appearing for the petitioner and Mr.Manokaran Sundaram, learned Additional Government Pleader accepting notice on behalf of the respondent and with the consent of learned counsel appearing on either side, this writ petitions are taken up for final disposal.

2.The petitioner who is the registered dealer under the provisions of the Tamil Nadu Vat Act, 2006, has filed these Writ Petitions, challenging the orders of revised assessment pursuant to the Value Added Tax Audit Inspection for the years 2007-08; 2008-09; 2009-10; 2010-11 & 2013-14.

3.The impugned orders are challenged primarily on two grounds, firstly on the ground that no opportunity was granted to the petitioner and secondly on the ground that the impugned orders have been passed revising the petitioner's turnover and re-determined the taxable turnover on grounds not pointed out in the show cause notices.

4.I have heard the learned counsels appearing on either side and peruse the materials placed on record.

5.It is seen that notices were issued to the petitioner by stating that at the time the VAT Audit was conducted in the place of the petitioner by the enforcement wing officials on 16.04.2015, they have noticed certain defects. Therefore, to examine the genuiness of their turnover, as well as other stipulations such as collection of tax, inter-state purchases, etc., as per the provisions of section 3(4) of the Act, it was stated that the petitioner has not produced their Books of Accounts. Therefore, it was observed that in the absence of such clarity, the compounding rates are not eligible. Accordingly, the respondent proposed to assess the related turnover at the appropriate rate mentioned in the show cause notice. There was also a proposal to levy penalty under section 27 of the Act. The petitioner submitted individual replies for all the show cause notices, stating that they have paid tax at 4% under compounding rate under section 3(4) of the Act and what they have done is correct, since the turnover is below the turnover prescribed under the Act. Further, it is stated that they have not collected tax or availed input tax as contemplated under the Act and they have not effected any inter-state purchases. Further, they undertook to produce necessary records for verification, for which they sought for one month time. Apart from that the petitioner also sought for personal hearing.

6.From the perusal of the impugned proceedings, it is seen that the respondent-Assessing Officer has taken note of the replies given by the petitioner, which also contains the specific request for an opportunity of personal hearing. However, while giving reasons, the authority has proceeded to state that the petitioner has not furnished the profit and loss account to verify the purchases, they have not furnished the sale invoices to verify the non-collection of tax and they have not furnished the opening and closing stock inventory to ascertain the gross profit and its genuiness and they have not disclosed the sales position at the previous years. Therefore, the authority proceeded to re-determine the turn over and collected the tax without calling for the documentary evidence and the objections given by the petitioner.

7.It has to be pointed out that in the show cause notices, though there was a proposal to disallow and assess the related documents at appropriate rates, there was no specific direction for production for records which were referred to in the impugned order. In any event, the petitioner sought for time to produce the records and their definite plea is that their turnover is below the turnover prescribed under the Act and they have not collected tax or availed input tax as contemplated under the Act and they have not effected any inter-state purchase.

8.That apart, the specific request made by the petitioner for an opportunity of personal hearing, has also not been granted. This amounts to violation of the Circular issued by the Commissioner in Circular dated 20.04.2001. Furthermore, the Hon'ble Division Bench of this Court in the case of SRC PROJECTS PRIVATE LIMITED v. COMMISSIONER OF JCOMMERCIAL TAXES, CHENNAI AND ANOTHER [(2010) 33 VST 333 (Mad)], elaborately considered the issue as to when and why an opportunity of personal hearing has to be granted and taking note of the Circulars issued by the Commissioner as well as the various decisions of the Hon'ble Supreme Court, held that in a case where the dealer seeks for a personal hearing, such dealer should be afforded the same in all cases where the authority proposes to record a finding which is adverse to the dealer and such adverse order to the assessee can only be made after giving an opportunity of hearing to the assessee. Thus, the impugned orders if tested on the anvil of the decision of the Hon'ble Division Bench of this Court, it has to be held that the impugned orders are in violation of principles of natural justice.

9.Therefore, the Writ Petitions are allowed and the impugned orders are set aside and the show cause notices are restored to the file of the respondent. The petitioner is granted two weeks time to submit their further reply along with the documents and appear for personal hearing on the date to be fixed by the respondents and after hearing the petitioner and perusing the documents, a speaking order shall be passed on merits and in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

rpa

To

The Commercial Tax officer
Kothawalchavadi Assessment Circle
Wawoo Mansion,
Chennai-600 001.

+1cc to Mr.C.Bakthasiromoni, Advocate, S.R.No.29900
+1cc to the Special Government Pleader(T), S.R.No.29928

W.P.Nos.18895 to 18899 of 2016

SCD(CO)
CA(09/06/2016)