IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.06.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.19484 & 19485 of 2016
and
W.M.P.Nos.16898 & 16899 of 2016

Tvl.Sana Associates
Represented by its Proprietrix
Mrs.R.Jothi
No.2/3, S.N. Street
Royapuram
Chennai - 600 013. .. Petitioner in both the WPs

..Vs..

The Commercial Tax Officer
Tondiarpet Assessment Circle
No.19 & 20, Kummalamman Koil Street
Chennai - 600 081 .. Respondent in both the WPs

Prayer in W.P.No.19484/2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN.3381203604/2013-14 dated 29.4.2016 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

Prayer in W.P.No.19485/2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records on the files of the respondent in TIN.3381203604/2014-15 dated 29.4.2016 and quash the same as being without jurisdiction, authority of law and contrary to the principles of natural justice.

For Petitioner
in both the WPs : Mr.R.Seniappan

For Respondent
in both the WPs : Mr.Manokaran Sundaram, A.G.P.,

COMMON ORDER

The petitioner who is registered dealer under the provisions of Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act, 2006) is a dealer in electronic toys. The respondent issued a notice on

28.03.2016 proposing to reverse the Input Tax Credit filed by the petitioner by exercising powers under Section 27 of the TNVAT Act, apart from proposing to levy penalty under Section 27(4) of the Act.

2.The petitioner's case is that he went to the office of the respondent in person and had given the objections. However, without taking note of his objection and without affording an opportunity of personal hearing to the petitioner, the impugned order of assessment has been passed. Though the petitioner is not able to substantiate the statement that he went to the office of the respondent in person, considering the fact that the petitioner is a small dealer, this Court deems it appropriate that the petitioner may be granted one more opportunity to put forth his objections.

3.Even assuming that the petitioner had not submitted his objections, the respondent could have called upon the petitioner to appear in person, so as to verify the particulars as the entire exercise had been conducted by the respondent based on the report of the enforcement wing.

4.In several decisions, this Court has held that an Assessing Officer being an adjudicating authority has to independently proceed with the assessment and not be guided by any external factors. Therefore, the Assessing Officer cannot state that he is an implementing authority of the enforcement wing. But his role is, as an independent person to consider the facts as placed by the dealer and thereafter, take action in accordance with law. Therefore, this Court deems it appropriate to grant one more opportunity to the petitioner to submit their objections.

5. Accordingly, the writ petitions are allowed and the impugned order is set aside. The petitioner is directed to file the objections within a period of two weeks from the date of receipt of a copy of this order. After the objection is received, the respondent shall fix a date for personal hearing, peruse the objections, hear the petitioner and consider the documents that may be filed by the petitioner and pass a reasoned order on merits and in accordance with law. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

pgp

To

The Commercial Tax Officer
Tondiarpet Assessment Circle
No.19 & 20, Kummalamman Koil Street
Chennai - 600 081

1 cc to Mr.R. Senniappan, Advocate, Sr. 31185
1 cc to Spl.Government Pleader (Taxes), Sr. 31273

W.P.No.19484 & 19485 of 2016
and
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