IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: **16.06.2016**

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.19612 to 19616 of 2016 &
WM. Nos.16974 to 16978 of 2016

Jeyanthi Pharmaa
rep. By its Proprietrix M.Jayanthi
NO.1, Kaliappan Street
K.K.Pudur, Coimbatore. .. Petitioner in all W.Ps.

Vs

1 The Assistant Commissioner (CT)
Saibaba Colony circle
Coimbatore.
.. Respondent in all W.Ps.

Common Prayer: The Writ Petitions are filed under Article 226 of the Constitution of India, seeking for Writ of certiorarified mandamus to call for the records on the files of the Respondent herein in TIN.33822062006/2010-11; 33822062006/2011-12; 33822062006/2012-13; 33822062006/2013-14; 3822062006/ 2014-15 all dated 22.09.2015, respectively and for quashing the same.

For Petitioner : Mr.N.Inbarajan

For Respondent : Mr.Manokaran Sundaram
Addl. Government Pleader

COMMON ORDER

Heard Mr.N.Inbarajan , 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.In all these Writ Petitions, the petitioner is a registered dealer under the provisions of the Tamil Nadu VAT Act, 2006. They were granted Registration on 21.02.2007, with the Tax Payer's Identification Number (TIN):33822062006. It is not in dispute that the said registration was cancelled in 2011. Thereafter, it appears that the petitioner made a fresh Application and the respondent issued a new Tax payer's Identification Number (TIN):33192062595.

3.The respondent issued notices for all the five years viz. 2010-11 to 2014-15, along with annexures. In the notice, it has been stated that the petitioner's Registration Certificate was cancelled with effect from 08.07.2011 and on verification of the MIS report available in the Department intranet site reveal that the petitioner has effected sales and collected tax from dealers as shown in the annexure to the notice and therefore, the respondent proposed to reject the petitioner's monthly returns as incorrect and incomplete and assessed the petitioner under section 22(4) of the Act. There was also a proposal to modify the penalty under section 27(3) of the Act. The petitioner was granted seven days time to file their objections. The petitioner does not dispute the fact that they have received the notices. Unfortunately, they failed to submit their objections, within the time permitted or even thereafter. Therefore, the respondent proceeded to complete the assessment on 'Best Judgment' basis and passed the impugned orders.

4.The learned counsel for the petitioner submitted that the respondent is the very same officer who had issued the fresh Registration Certificate on 19.06.2012 and without taking note of the same, the impugned orders have been passed more particularly with regard to the assessment years 2011-12 to 2014-15. Therefore, it is submitted that the petitioner may be granted an opportunity to submit their objections before the Officer so that all the facts can be placed. The learned counsel for the petitioner further submitted that the non-filing of the objections to the show cause notices on account of the fact that the Accountant of the petitioner failed to bring to the notice of the petitioner about the show cause notices issued and therefore, they genuinely regarded for the mistakes committed.

6.Considering the facts and circumstances of the case and taking note of the fact that the very same officer has given a fresh Registration Number in 2012 and as it is stated that the petitioner has been filing Returns based on the new TIN number and paying tax, this Court is of the view that one more opportunity can be granted to the petitioner to file their objections before the respondent, however, such opportunity would be subject to certain conditions.

7.For all the above reasons, this Court is not inclined to quash the impugned orders, but to direct the the petitioner to treat the impugned orders as show cause notices and the petitioner is directed to pay 15% of the tax demanded in respect of all the five assessment years viz. 2010-11 to 2014-15, within a period of three weeks from the date of receipt of a copy of this order. Along with payment, the petitioner shall file their objections to the impugned orders as the same have been directed to be treated as show cause notices and on receipt of the same, the respondent is directed to afford an opportunity of personal hearing, verify the records and thereafter, pass speaking orders, on merits and in accordance with law.

The Writ Petitions are disposed of accordingly. No costs. Consequently, connected Miscellaneous

10.06.2016

rpa

To

1 The Assistant Commissioner (CT)
Saibaba Colony circle
Coimbatore.

T.S.SIVAGNANAM, J.,
rpa

W.P.Nos. 19612 to 19616 of 2016

10.06.2016