IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 05.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.28972 to 28976 of 2015

&

M.P.Nos.1 to 1 of 2015 and M.P.Nos.2 to 2 of 2015

W.P.No.28972 of 2015

M/s.Oragadam City Developers Pvt. Ltd.,
No.5, Giri Road, T.Nagar
Chennai - 600 017
Represented by its Authorized Signatory .. Petitioner

Vs.

The Assistant Commissioner
Mylapore Assessment Circle
Chennai - 600 028 .. Respondent

Prayer in WP.No.28972/2015:

The Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a writ of certiorari to call for the records of the respondent in TIN No.33400702976/2009-10 dated 27.02.2015 and Memo TIN No.33400702976/2009-10 dated 10.07.2015 quash the same as it is violative of Section 27 of the TNVAT Act, 2006 and the Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and also against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting an opportunity of being heard.

Prayer in WP.No.28973/2015: The Writ Petition is filed under Article 226 of the Constitution of India, for the Issuance of Writ of Certiorarified Mandamus to To call for the records of the respondent in the impugned order in TIN No. 33400702976/ 2010-11 dated 27.02.2015 and Memo in TIN No. 33400702976/ 2010-11 dated 10.07.2015 quash the same as violative of section 27 of the TNVAT Act 2006 and violative of Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting an opportunity of being heard.

Prayer in WP.No.28974/2015:The Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus to To call for the records of the respondent in the impugned order in TIN No. 33400702976/ 2011-12 dated 27.02.2015 and Memo in TIN No. 33400702976/ 2011-12 dated 10.07.2015 quash the same as violative of section 27 of the TNVAT Act 2006 and violative of Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting an opportunity of being heard.

Prayer in WP.No.28975/2015:The Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in the impugned order in TIN No. 33400702976/ 2012-13 dated 27.02.2015 and Memo in TIN No. 33400702976/ 2012-13 dated 10.07.2015 quash the same as violative of section 27 of the TNVAT Act 2006 and violative of Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting an opportunity of being heard.

Prayer in WP.No.28976/2015:The Writ Petition is filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorarified Mandamus to call for the records of the respondent in impugned order in TIN No. 33400702976/ 2013-14 dated 27.02.2015 and Order in TIN No. 33400702976/ 2013-14 dated 10.07.2015 quash the same as violative section 27 of the TNVAT Act 2006 and violative of Circular No.7/2014 (BB1/3589/2014) dated 03.02.2014 issued by the Commissioner of Commercial Taxes and against the principles of natural justice and further direct the respondent to pass orders in accordance with law after granting an opportunity of being heard.

For Petitioner : Mrs. Radhika Chandra Sekhar
in all WPs

For Respondents : Mr.Manoharan Sundaram
Additional Government Pleader in all Wps

C O M M O N O R D E R

Heard Mrs.Radhika Chandrasekhar, learned counsel for the petitioner and Mr.Manoharan Sundaram, learned Additional Government Pleader appearing for the respondent.

2. The petitioner, who is a registered dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006, is a Developer and flat promoter and they have challenged the Orders of Assessment for the years 2009-10, 2010-11, 2011-12, 2012-13 and 2013-14 dated 27.02.2015 and the rejection of the petitions filed by them under Section 84 of the Act. To dispose of these writ petitions, it may not be necessary to go into the merits of the assessments as done by the respondent. As the petitioner, though received the notices for all the Assessment Years on 27.01.2015 wherein the respondent proposed to revise the total and taxable turnover of the petitioner, did not avail the opportunity to submit their objections to the notices. This resulted in the passing of the impugned Assessment Orders dated 27.02.2015. Thereafter, the petitioner woke up and filed petitions under Section 84 of the Act requesting the respondent to review the orders. These petitions were rightly dismissed by the respondent stating that the petitioner, having not availed the opportunity afforded to them in the notices dated 27.01.2015, cannot claim that there has been a violation of principles of natural justice nor can they state that there was an error apparent on the face of the record warranting exercise of jurisdiction under Section 84 of the Act. Furthermore, the petitioner, did not seek any opportunity of personal hearing.

3. This Court is of the view that the decision taken by the respondent rejecting the petitions filed under Section 84 of the Act cannot be faulted. However, the fact remains that though the Assessee did not submit their objections, it appears that for all the five years, they have already reversed the Input Tax Credit to the tune of Rs.63,14,642/-. However, at this stage of the matter, these issues cannot be gone into as it would amount to touching upon the merits of the assessments. Thus, the petitioner to be entitled to a fresh opportunity, the petitioner should be put on terms.

Accordingly, these writ petitions are disposed of with the following directions:

The petitioner is directed to deposit 15% of the disputed tax as quantified in the Assessment Orders dated 27.02.2015 for all the five years and the petitioner, at this stage of the matter, cannot seek for any reduction in the amount by stating that they have already reversed the Input Tax Credit. In otherwords, 15% of the disputed amount shall be payable on the demand of Rs.1,41,83,804/-. The petitioner is granted eight weeks time to effect the payment and on effecting such payment, the petitioner is entitle to treat the impugned Assessment Orders as show-cause notices and submit their objections within a period of two weeks from the date of receipt of a copy of this order. On receipt of the objection, the petitioner shall be afforded an opportunity of personal hearing within a period of two weeks thereafter and thereafter, the respondent shall proceed to complete the assessment in accordance with law. If the petitioner fails to comply with the condition imposed in this order, the benefit of this order will not enure to the petitioner and the writ petitions shall stand dismissed leaving it open to the petitioner to work out their remedies under the provisions of the Act. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gpa

To

The Assistant Commissioner
Mylapore Assessment Circle
Chennai - 600 028

+1 cc to Mr.K.Vaitheeswaran Advocate sr.37834
+1 cc to Special Government Pleader(Taxes) High Court Madras
38198

W.P.Nos.28972 to 28976 of 2015 &
M.P.Nos.1 to 1 of 2015 and M.P.Nos.2 to 2 of 2015

aa23/07/2016