IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.1881 to 1886 of 2014
&
M.P.Nos.1 to 1 of 2014

Tvl.Qualitronics (Madras) Pvt. Ltd.,
Rep. by its Accounts Manager,
Thiru.Sritharan,
No.112, Tiny Sector,
Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai-32 ...Petitioner in all Writ Petitions

Versus

The Assistant Commissioner (CT) (Addl) (FAC),
Guindy Assessment Circle,
No.46, Greenways Road,
Chennai-32. ...Respondent in all Writ Petitions

Prayer in all Writ Petitions: 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 on the file of the respondent TIN/33350920193/2007-08, 2008-09, 2009-10, 2010-11, 2011-12, 2012-13 respectively, dated 13.12.2013, quash the same being arbitrary and illegal and direct the respondent to receive the documents from the petitioner and re-do the assessment strictly in accordance with the Act and Rules after affording an opportunity of being head/personal hearing.

For Petitioner in all Writ Petitions : Mr.S.N.Kirubanandam

For Respondent in all Writ Petitions : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N   O R D E R

Heard Mr.S.N.Kirubanandam, learned counsel appearing for the petitioner in all Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent in all Writ Petitions.

2. The petitioner is a private limited company registered under the provisions of the Companies Act and a dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as "TNVAT Act"). In these Writ Petitions, the petitioner has challenged the orders of Assessment under the provisions of the TNVAT Act for the Assessment years 2007-2008 to 2012-2013.

3. Though several contentions have been raised by the learned counsel for the petitioner on the merits of the assessment, the learned counsel would confine his argument to two issues. Firstly, the respondent has not considered the petitioner's representation dated 22.04.2013, pursuant to the receipt of the pre-revision notice. Secondly, it is contended that though, it is mentioned in the impugned order that the revision of assessment is under Section 27(4) of the TNVAT Act, the revision is under Section 22(4) of the TNVAT Act and cannot be made without affording an opportunity of personal hearing.

4. Counter affidavit filed by the respondent would show that the first contention raised by the petitioner has not been specifically dealt with. But, on the merits of the assessment, the respondent would state that "C" Forms and "F" Forms and other declarations have not been furnished within a period of three months. Further, it is submitted that in terms of Section 27, the question of affording an opportunity of personal hearing does not arise.

5. Firstly, the respondent should have dealt with the petitioner's representation, dated 22.04.2013. In the representation, apart from the fact that the petitioner has given certain explanation and requested time for production of the declaration forms. Apart from that specifically, they sought for personal hearing. The Hon'ble Division Bench of this Court in several decisions has held that when a request is made by the dealer for grant of opportunity of personal hearing, it should be granted. Therefore, whether it is a revision of assessment under Section 22(4) or 27(4), when there is a request made by the dealer for personal hearing,

the Assessing Officer should grant the same. The reason being that it will facilitate in the Assessment Proceedings and ensure that correct rate of taxes are recovered by the Department. This having not been is sufficient to hold that the impugned orders are in violation of the principles of natural justice.

6. With regard to furnishing of "C" Forms and "F" Forms and other declaration forms, time and again, this Court has held that these forms are produced by the dealers only to avail the concessional rate of tax and there may be various reasons as to why the dealer cannot produce the forms within a time frame and the dealer should not be prevented from producing the form as and when they are able to secure the same, as it has to be furnished by the other end dealer.

7. Taking note of the various decisions, the Commissioner of Commercial Taxes has issued a Circular that the Declaration forms can be accepted by the Assessing Officer, even if it is not submitted within three months, by assessing the conduct of the dealer i.e., if a dealer has been a chronic defaulter, then, the provisions of the Circular may not apply to such dealer. However, in the instant case, the respondent has not recorded any finding that the petitioner is a chronic defaulter.

8. Hence, in all the above reasons, this Court is convinced that the impugned orders are in violation of principles of natural justice. Accordingly, these Writ Petitions are allowed and the impugned orders are set-aside and the matters are remanded to the respondent for fresh consideration with a direction to the respondent to accept "C" Forms and "F" Forms and other declarations, which are available with the petitioner and it should be produced by the petitioner within a period of four weeks from the date of receipt of a copy of this order. After which, the respondent shall afford an opportunity of personal hearing to the petitioner and redo the assessments in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

The Assistant Commissioner (CT) (Addl) (FAC),
Guindy Assessment Circle,
No.46, Greenways Road,
Chennai-32.

+6ccs to Mr.S.N.Kirubanandam, Advocate, S.R.No. 62604

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CNR (CO)
PSI (02/12/2016)