IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

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THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.33118 to 33126 of 2015
and
M.P.Nos.1 to 1 of 2015

Coromandel Engineering Company Ltd.,
(Represented by its Company Secretary
Mr.R.Narayanan)
Parry House, III Floor,
No.43, Moore Street,
Parrys, Chennai - 600 001. ... Petitioner in all W.Ps

Vs

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
116, Angappa Naicken Street,
Chennai - 600 001. ... Respondent in all W.Ps

Prayer in all W.Ps: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, to call for the records on the file of the respondent herein in TIN:33310100122/2006-07 to 2014-15 dated 16.09.2015 and quash the same.

For Petitioner in all W.Ps : Mr.N.Sriparakash

For Respondent in all W.Ps : Mr.S.Kanmani Annamalai
Additional Government Pleader

COMMON ORDER

Heard Mr.N.Sriprakash, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondent and with their consent, the writ petitions are taken up for disposal.

2.In these writ petitions, the petitioner has challenged the orders of assessment dated 16.09.2015 under the provisions of the Tamil Nadu Value Added Tax Act (hereinafter referred to as "the Act") for the assessment years 2006-07 to 2014-15.

3.Though several grounds have been raised by the petitioner, the learned counsel appearing for the petitioner lays emphasis on two grounds. Firstly on the ground that a specific request was made by the petitioner in their objections dated 16.02.2015 to provide an opportunity of personal hearing, but the same was not granted. Secondly, it is contended that the turnover sought to be re-assessed based on alleged mismatch as per the departmental website, it is submitted that no details were furnished to the petitioner and the Assessing Officer has violated the circular issued by the Principal Secretary/Commissioner of Commercial Taxes dated 01.04.2015.

4.The learned Additional Government Pleader appearing for the respondent, on instructions, submitted that the Assessing Officer has met him and assured to give written instructions but does not approached him thereafter but would admit that an opportunity of personal hearing was not granted.

5.The issue as to whether personal hearing has to be granted or not has been settled by this Court in the decision in SRC Projects Private Limited vs. Commissioner of Commercial Taxes, Chennai and another reported in (2010) 33 VST 333 (Mad). Therefore, failure to grant an opportunity of personal hearing would render the impugned order as having been passed in violation of principles of natural justice.

6.With regard to the assessment to be made based on mismatch from the information available in the departmental website, since this issue was a recurrent issue in all the assessment circulars, the Commissioner thought fit to issue a circular dated 01.04.2015 in Circular NO.10/2015/D3/8562/2014. At this stage, it would be worthwhile to reproduce the directions issued to the Assessing Officer in the said Circular.

> "Therefore, it is ordered that all notices issued to the dealers must mandatory enclose details of the facts referred to as the basis for the additional tax demand proposed in the notice as below:
>
> (a) In case of return mismatch-based notices, invoice-wise data of mismatches for each demand must be mandatorily attached to the notice either in print form or as a CID or send as email (in case it is voluminous).
>
> (b) The fact of enclosing such mismatch transaction date (Invoice level) shall be clearly mentioned entered in the notice and acknowledgment receipt obtained.
>
> (c) Personal hearing, if requested by the dealer,

shall be mandatorily ensured and a patient hearing provided to the dealer in order to understand the basis of his contentions and the same should be recorded in the assessment proceedings.

(d)Orders passed thereafter must be speaking and must address every contention raised by the dealer in clear terms to ensure that the orders are fair and justified not only in appellate forum but also it is felt by the dealers there by to which the dealer might not tend recourse."

7.In terms of the above circular, in cases of mismatch invoice-wise data for mismatch to each demand must be mandatorily attached or to the notice either in print form or as a CID or send as email (in case it is voluminous). Further, the fact of enclosing such mismatch transaction date (Invoice level) shall be clearly mentioned entered in the notice and acknowledgment receipt obtained. Further, personal hearing has been held to be mandatorily granted and the Assessing Officer was directed to give a patient hearing to the dealer in order to understand the basis of his contentions and the same should be recorded in the assessment proceedings. Further, the circular precludes that the order of assessment must be a speaking order and must address every contention raised by the dealer in clear terms to ensure that the orders are fair and justified not only in appellate forum but also it is felt by the dealers there by to which the dealer might not tend recourse.

8.On perusal of the impugned order, it is evidently clear that none of these parameters mentioned in the Circular have been adhered to. Therefore, on these grounds, the petitioner is entitled to succeed. Accordingly, the writ petitions are allowed and the impugned orders are quashed and the matters are remanded to the respondent for fresh consideration, who shall furnish all the details with regard to the mismatch as per the directions issued by the Commissioner in the circular, after which the petitioner is entitled to submit their objections and after affording an opportunity of personal hearing, re-do the assessment in accordance with law by passing a speaking order dealing with all the contentions raised by the petitioner. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner (CT),
Esplanade Assessment Circle,
116, Angappa Naicken Street,
Chennai - 600 001.

+1cc to Mr.N.Inbarajan, Advocate, S.R.No.47264
+1cc to the Special Government Pleader(T), S.R.No.47258

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and
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AD(CO)
CA(09/09/2016)