IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2016

CORAM:

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.Nos.35395 & 35396 of 2015

Tvl. Connect Residuary Private Limited,
represented by its Head-Finance and Accounts,
No.41, Old No.20, Mahalingapuram,
Nungambakkam, Chennai 600 020. ..Petitioner in both petitions

Vs.

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Chennai. ... Respondent in both petitions.

Prayer in both writ petitions : Writ petitions filed under Article 226 of the Constitution of India praying for issuance of writ of Mandamus to call for the records of the respondent relating to the impugned orders in TIN Nos. 33441003363/2012-13 and 2014-2015 dated 30.09.2015 and to quash the same as illegal, arbitrary and unconstitutional and to further direct the respondent to grant an opportunity of personal hearing to the petitioner to furnish the books of accounts for the Assessment years 2012-2013 and 2014-2015 before passing fresh orders in accordance with law.

For Petitioner : Mr.A. Ravichandran

For Respondents : Mr.S.Manoharan Sundaram, AGP.

ORDER

The petitioner has come forward with these writ petitions challenging the impugned orders dated 30.09.2015 passed by the respondent for the assessment years 2012-2013 and 2014 - 2015 and consequently directing the respondent to grant an opportunity of personal hearing to the petitioner so as to enable them to furnish the books of accounts for the assessment years in question.

2. It is the case of the petitioner that the petitioner is a dealer in renting equipments and an assessee on the files

of the respondent under the Tamilnadu Value Added Tax Act, 2006. The respondent had originally assessed the petitioner for the assessment years 2012-2013 and 2014-2015 under section 22 of Tamilnadu Value Added Tax Act. Whileso, on 24.10.2014, the business place of the petitioner was inspected by the enforcement officials, during the course of which, certain defects were noticed by the respondent. Subsequently, notices dated 27.2.2015 came to be issued, thereby proposed to assess the total sales turnover escaped from assessment as Rs.2,36,93,565/- at 14.5% for the assessment year 2012-2013 and Rs.67,8,983/- at 14.5% for the assessment year 2014-2015 and reversed the Input Tax Credit under section 19(16) of the Act, 2006 and also levied penalty for both the assessment years.

3. On receipt of the same, the petitioner duly sent their reply dated 28.3.2015 stating that the respondent had wrongly quoted the Government Order as GO.Ms.No.356 instead of G.O.Ms.No.36. It was further stated therein that they were informed by the Enforcement Wing Officials that they would be called upon for enquiry and hence the petitioner prayed that the provisions made in the notices shall be kept in abeyance till the completion of enquiry by the Enforcement Wing Officials. The respondent having received the objections dated 28.3.2015 filed by the petitioner, though admitted the inadvertent wrongful entry of the Government order as G.O.Ms.No.356 instead of G.O.Ms.No.36, has mechanically confirmed the proposed assessment and passed the assessment orders dated 30.09.2015 for the years in question without considering the request of the petitioner on the ground of the proposed enquiry by the enforcement wing officers. Aggrieved against the same, the petitioner has filed these writ petitions.

4. Learned counsel for the petitioner submitted that the impugned orders have been passed by the respondent without giving due opportunity of personal hearing to the petitioner and without providing sufficient time for production of the documents to substantiate their case. Further, the learned counsel, by relying on the decision reported in 2011 42 VST 61 Mad (Esjaypee Impex (P) Ltd Vs. Commercial Tax Officer, Sowcarpet I Assessment Circle, Chennai) submitted that the respondent ought to have sent intimation to the petitioner then and there, when a request for extension to the dealer is either granted or rejected. Hence the impugned orders of the respondent are arbitrary, illegal and against the principles of natural justice.

5. On the other hand, the learned Additional Government Pleader, on instructions, fairly submitted that no opportunity of personal hearing was granted to the petitioner.

6. I have considered the submissions made on both sides and perused the materials placed before this Court.

7. In the case on hand, the notices dated 27.2.2015 came to be issued before expiry of the assessment years. In such circumstances, the revised assessment should be made under Section 25 of the Act and not under Section 27(1)(c) of the Act. As rightly pointed out by the learned counsel appearing for the petitioner, the respondent without providing sufficient time and without affording an opportunity of personal hearing to the petitioner, passed the assessment orders for the years in question. Therefore, in my opinion, the impugned orders are arbitrary and against the principles of natural justice and the same are liable to be set aside.

8. Accordingly, the impugned orders dated 30.09.2015 passed by the respondent for the assessment years 2012-2013 and 2014-2015 are set aside and the matters are remanded back to the respondent for passing fresh orders. The petitioner is permitted to file their objections if any, along with supportive documents within two weeks from the date of receipt of a copy of this order . On filing of such objections, the respondent shall consider the same and pass orders on merits and in accordance with law, after affording due opportunity of personal hearing to the petitioner. Such exercise shall be completed within a period of six weeks thereafter.

9. These Writ Petitions are disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

msr

To

The Assistant Commissioner (CT),
Ayanavaram Assessment Circle,
Chennai.

+2 ccs to M/s. A.Ravichandran, Advocate, sr.4184 & 4859
+1 cc to The Special Government Pleader (Taxes), sr.4559.

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vg co, kra 22.02.2016