IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.37848 to 37853 of 2015 &

M.P.Nos.1 to 1 of 2015

Tvl.R.Rama Rao,
No.192/29, V.V.Koil Street,
T.V.Nagar, Anna Nagar (West),
Chennai-600 040. .. Petitioner in all Writ Petitions

Versus

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Market Management Committee Building,
Koyambedu, Chennai-600 107. .. Respondent in all Writ Petitions

Prayer: This Writ Petition is 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 in TIN:33491342690/2007-08 to 2012-13, respectively, dated 27.10.2015 and quash the same as illegal, contrary to the appeal order and against the principles of natural justice and fair play and direct the respondent to consider the objection on merits and afford opportunity of personal hearing.

For Petitioner in all Writ Petitions : Mr.T.Pramodkumar Chopda

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.T.Pramodkumar Chopda, 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, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act (hereinafter referred as "TNVAT Act") was issued

notices for revision of assessment for all the relevant years, by notice dated 08.09.2014. In the said notice, there were four issues which were pointed by the Assessing Officer, which was based upon the VAT Audit which was conducted in the business premises of the petitioner by the Enforcement Wing Officials on 21.03.2014. Four issues which were pointed out in the notice are: (1) TDS not deducted from Sub Contractor and paid to the Department, (2) Deemed sales and tax due arrived on the Actual Gross Profit earned, (3) Difference in the purchase turnover as per monthly returns and as per trading accounts (4) Disallowance of ITC claimed on the purchases made from unregistered dealers. Apart from the above four issues, the respondent also proposed penalty.

3. Since the petitioner did not respond to the pre-revision notice and did not file any objections, the respondent completed the assessment and confirmed the proposals in the notice, by passing assessment orders on 29.09.2014 for all the years. Aggrieved by the same, the petitioner preferred Appeals to the Appellate Deputy Commissioner (CT), Chennai South. Appeals were partly allowed, by orders dated 30.04.2015, by remanding the matter to the Assessing Officer for fresh consideration. On such remand, the respondent issued a notice, dated 24.07.2015, which is common for all the assessment years i.e., 2007-2008 to 2012-2013, calling upon the petitioner to file their objections. The petitioner filed common objections dated 10.08.2015.

4. Thereafter, the respondent issued individual notices, dated 14.08.2015 for all the assessment years. Once again, the petitioner submitted their separate objections for all the assessment years, dated 20.08.2015. While submitting the same, the petitioner enclosed copies of proof of payment of taxes and TDS recovered for the relevant years. Since the petitioner had done substantial work for the Corporation of Chennai, they had furnished the required Statement of Tax Deduction at Source given by the Executive Engineer of Corporation of Chennai addressed to the Assistant Commissioner, Commercial Tax OFfice, Porur Taxation Circle. After receipt of the objections, the respondent granted personal hearing and fixed the same on 28.09.2015. In paragraph No.7 of the affidavit filed in support of the Writ Petition, the petitioner has specifically stated that their Accountant-Prabakaran appeared before the respondent on the said date. However, since the respondent had some urgent meeting at Greams road, she had to go and inform the Accountant that she will go through the objection and records filed by the petitioner and call upon the Auditor to appear-in-person, if required. It is further submitted that on the said date i.e., 28.09.2015, the petitioner's Accountant submitted a letter to the respondent to issue Form 'S' i.e, No Liability Certificate in respect of the Works Contract. However, the respondent has completed the assessment by passing the impugned orders.

5. On a perusal of the impugned order, it is seen that the respondent has recorded a finding that the petitioner did not appear for the personal hearing on 28.09.2015. This seriously being disputed by the petitioner and specific averment has also been made in the affidavit filed in the support of the Writ Petition, as mentioned above. In the written instructions given by the respondent to the learned Special Government Pleader vide his letter dated 15.12.2015, this averment has not been specifically denied, but the respondent would state that the petitioner did not appear for the personal hearing and did not enclose any documentary evidence to substantiate their contention. The specific contention of the petitioner is that they have produced relevant documents to show that the tax has been deducted by Corporation of Chennai and there is no dispute to the fact that the same has been remitted to the Department. Thus, it is seen that effective opportunity has not been granted to the petitioner and there is no averment in the impugned order as to why the certificate issued by the Corporation of Chennai should not be accepted by the respondent. It is submitted that the Corporation of Chennai only gives a statement of tax deduction at source and they are not in the habit of issuing Form I as required. However, the respondent can verify as to whether the tax has been deducted at source has been remitted to the Department, more so, when the corporation of Chennai has certified the deduction and forwarded the statement to their assessing officer. Thus, this Court is convinced that the petitioner has not been given adequate opportunity to put-forth their contentions.

6. As pointed out there were four issues arise for consideration. With regard to the first issue i.e., The Tax Deduction at Source, the respondent can very well verify the statements given by the Corporation of Chennai and take a fresh decision. So far issue No.2, Deemed Sales, the petitioner has given an explanation, which has not been specifically dealt with in the impugned order. With regard to the remaining two issues, i.e., Difference in the purchase turnover and Disallowance of ITC claimed on the purchases made from the unregistered dealers, the respondent has not furnished any particulars to enable the petitioner to submit an effective reply. The invoice details, name of the dealers and name of the registered dealers etc., have to be furnished, since these details have been culled out by the respondent from the official records / website.

7. Hence, for all the above reasons, the impugned orders call for interference. Accordingly, these Writ Petitions are allowed and the impugned orders are set-aside and the matters are remanded to the respondent for fresh consideration. The respondent is directed to furnish the details pertaining to the difference in purchase turnover and details regarding the purchases made from unregistered dealer, by giving full particulars and this shall be furnished to the

petitioner within a period of 15 days from the date of receipt of a copy of this order. On receipt of those details, the petitioner is directed to submit their objections within a period of 15 days therefrom. After which, the respondent shall afford an opportunity of personal hearing, peruse all the documents that may be produced by the petitioner and redo the assessment on all the four issues, afresh and in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

r n s

To

The Assistant Commissioner (CT),
Koyambedu Assessment Circle,
Market Management Committee Building,
Koyambedu, Chennai-600 107.

1 cc to Mr.T. Pramodkumar Chopda, Advocate, Sr. 62946
1 cc to Government Pleader, Sr. 63123

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SK (CO)
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