IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.DURAISWAMY

W.P.Nos.9915 to 9918 of 2015 &

M.P.Nos.1 to 1 of 2015 (4 MPs)

Tvl.Surana Industries Ltd
Rep. by its General Manager
(Finance and Accounts) cum Authorized Signatory
K.Karthik
No.29 Whites Road
Chennai-14. .. Petitioner in all W.Ps

v.

The Assistant Commissioner(CT)
Royapettah-I Assessment Circle
Greenways Road
Chennai-600 028. .. Respondents in all W.Ps

W.P.No.9915/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records on the files of the respondent in TIN 33730721370/2008-2009, dated 30.12.2014 and quash the same as being contrary to the principle laid down by this Honourable Court in the judgement rendered in W.P.No.9265 of 2013, dated 6.11.2014 (Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle Chennai-107)

W.P.No.9916/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandas, Calling for the records on the files of the respondent in TIN 33730721370/2006-2007, dated 21.1.2015 and quash the same as being contrary to the principles of natural justice and further direct the respondent to pass order afresh in accordance with law.

W.P.No.9917/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, Calling for the records on the files of the respondent in TIN 33730721370/2007-2008, dated 6.2.2015 and quash the same as being contrary to the principles of natural justice and further direct the respondent to pass order afresh in accordance with law.

W.P.No.9918/2015 filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, Calling for the records on the files of the respondent in TIN CST8384282008-2009 dated 31.12.2014 and quash the same as being contrary to the principles of natural justice and further direct the respondent to pass order afresh in accordance with law.

For Petitioner : Mr.R.Senniappan

For Respondents : Mr.S.Kanmani Anamalai
Addl. Govt. Pleader (T)

COMMON ORDER

W.P.No.9915 of 2015 has been filed by the petitioner to issue a Writ of Certiorari to call for the records on the file of the respondent in TIN No.33730721370 for the assessment year 2008-2009, dated 30.12.2014 and quash the same as being contrary to the principle laid down by this Court in the judgement made in W.P.No.9265 of 2013, dated 6.11.2014 (Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle Chennai-107)

2. W.P.Nos.9916 to 9918 of 2015 were filed by the petitioner to issue a Writs of Certiorarified Mandamus to call for the records on the file of the respondent in TIN No.33730721370 for the assessment year 2006-2007, dated 21.1.2015, for the assessment year 2007-2008, dated 6.2.2015 and for the assessment year 2008-2009, dated 31.12.2014 and to quash the same and further direct the respondent to pass orders afresh in accordance with law.

3. It is the case of the petitioner that in W.P.No.9915 of 2015 the respondent had passed the impugned order dated 30.12.2014 contrary to the principle laid down by this Court in the judgement reported in 2012 (5) VST 179 (Mds) [Althaf Shoes (P) Ltd. v. Assistant Commissioner (CT), Valluvarkottam Assessment Circle, Chennai] whereby this court held that if the selling dealer has not filed monthly return or paid the tax due thereon, it is for the department to proceed against the seller and not on the innocent buyer. In the judgement made in W.P.No.9265 of 2013, dated 6.11.2014 (Infinity Wholesale Ltd. Vs. Assistant Commissioner (CT) Koyambedu Assessment Circle Chennai-107), this court held that the mere fact that the Revenue had not made an assessment on the assessee's vendor, per se cannot stand in the way of the Assessing Officer considering the claim of the assessee under section 19 of the Tamil Nadu Value Added Tax Act.

4. Mr.R.Senniappan, learned counsel appearing for the petitioner submitted that the impugned order passed by the respondent is against the principle laid down by this Court in the judgement made in in W.P.No.9265 of 2013, dated 6.11.2014 (cited supra).

5. Mr.Kanmani Annamalai, learned Additional Government Pleader (Taxes) appearing for the respondent submitted that the issue is covered by the decision relied upon by the learned counsel appearing for the petitioner.

6. In W.P.Nos.9916 and 9918 of 2015, the respondent had passed the impugned orders dated 21.1.2015 and 31.12.2014 without pointing out the mistakes so as to enable the petitioner to file appropriate rectification petitions and in the absence of an opportunity being given to the petitioner to file appropriate petitions, the impugned orders are liable to be set aside.

7. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that since the respondent had not given an opportunity to the petitioner to rectify the mistakes, the impugned orders can be set side and an opportunity can be given to the petitioner to rectify the mistakes and file their objections.

8. So far as W.P.No.9917/2015 is concerned, the impugned order dated 6.2.2015 was challenged by the petitioner on the ground that no opportunity of personal hearing was given.

9. Since the petitioner was not given an opportunity of personal hearing, which is violative of principles of natural justice, the impugned order dated 6.2.2015 is liable to be set aside.

10. The learned Additional Government Pleader (Taxes) appearing for the respondent submitted that an opportunity can be given to the petitioner to put-forth their case before the respondent and the respondent may be directed to decide the matter afresh.

11. Having regard to the submissions made by the learned counsel on either side, the writ petitions are ordered as follows:

(i) In W.P.No.9915/2015 since the issue is covered by the decision relied upon by the learned counsel appearing for the petitioner, the impugned order dated 30.12.2014 for the assessment year 2008-2009 is liable to be set aside. Accordingly, the same is set aside. The writ petition in W.P.No.9915/2015 stands allowed.

(ii) In W.P.No.9917/2015, since the petitioner was not given an opportunity of personal hearing, the impugned order dated 6.2.2015 for the assessment year 2007-2008 is set aside and the matter is remitted back to the respondent for fresh consideration and the respondent is directed to decide the matter afresh, after affording due opportunity of personal hearing to the petitioner. The writ petition in W.P.No.9917/2015 is allowed.

(iii) So far as W.P.Nos.9916 and 9918 of 2015 are concerned, the impugned orders dated dated 21.1.2015 and 31.12.2014 for the assessment years 2006-2007 and 2008-2009 are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent is directed to point out the mistakes in the Forms submitted by the petitioner and provide an opportunity to the petitioner to rectify the mistakes and thereafter decide the matter afresh, after affording due opportunity of personal hearing to the petitioner. With these observations, the writ petitions in W.P.Nos.9916 and 9918 of 2015 are disposed of.

No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner(CT)
Royapettah-I Assessment Circle
Greenways Road
Chennai-600 028.

+1cc to Mr.R.Senniappan, Advocate, S.R.No.23233
+1cc to the Government Pleader, S.R.No.23011

W.P.Nos.9915 to 9918 of 2015 &
M.P.Nos.1 to 1 of 2015 (4 MPs)

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