IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.23488 to 23493 of 2016
&
W.M.P.Nos.20132 to 20137 of 2016

M/s.Techno Traders,
Represented by its Proprietor,
Mr.Abid M.A.Chhagan,
Old No.193, New No.258,
Linghi Chetty Street,
Chennai-600 001. ... Petitioner in all the Writ Petitions

Versus

The Commercial Tax Officer,
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai-600 001. ... Respondent in all the Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, to call for the impugned proceedings of the respondent in TIN/33210060213/2009-10, 2010-11, 2011-12, 2012-13, 2013-14 & 2014-15 respectively dated 31.05.2016 and quash the same as passed contrary to the principles of natural justice and also contrary to the judgment of the Hon'ble Supreme Court in the case of the State of Maharastra Vs.Suresh Trading Company reported in 109 STC 439 and this Court in the case of M/s.Jinsasan Distributors Vs. Commercial Tax Officer (CT), Chintaripet Asst. Circle reported in 59 VST 256, in the case of M/s.Althaf Shoes (P) Ltd., reported in 50 VST 179, in the case of M/s.Sri Vinayaga Agencies reported in 60 VST 283, in the case of Aassan Global Trade in W.P.Nos.25996 to 25998 of 2014 and also in the case of M/s.Infiniti Wholesale Limited in W.P.No.9265 of 2013.

For Petitioner in all Writ Petitions : Mr.P.Rajkumar

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

# C O M M O N   O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner in all Writ Petitions and Mr.S.Kanmani Annamalai, learned Additional Government Pleader, accepting notice on behalf of respondent in all Writ Petitions. With the consent of the learned counsel on either side, these Writ Petitions are taken up for final disposal.

2. The petitioner is a dealer in hardwares, tools implements, carbide tips and tools, hand tools etc., and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as 'TNVAT Act').

3. The challenge in these Writ Petitions are to the Assessment Orders passed by the respondent for the years 2009-10, 2010-11, 2011-12, 2012-13 2013-14, 2014-15 respectively. The place of business of the petitioner was inspected by the Enforcement Wing Officials on 24.07.2015, 14.08.2015, 17.08.2015, 24.08.2015 and 29.08.2015. Based on the reports submitted by the Enforcement Wing Officers, the respondent issued notices dated 30.09.2015, proposing to revise the assessment made for all the six years, as mentioned above. The proposal in the notices were pertaining to reversal of ITC for the purchases made from the registration certificates cancelled dealers, proposal to reversal of excess ITC availed as per cross verification - annual scrutiny, purchase suppression on mismatch turnover on cross verification - annual scrutiny and purchase suppression (purchase details as per web report (Annexure II of the other end dealers). The respondent also proposed to levy penalty under Section 27 of the TNVAT Act and the petitioner directed to submit their objections and an opportunity of personal hearing, if the petitioner seeks for it. The petitioner submitted their objections for all the years by separate objections, all dated 23.10.2015. In the objections, the petitioner had specifically sought for an opportunity of personal hearing.

4. It is not in dispute that the respondent did not grant an opportunity of personal hearing, but proceeded to complete the assessment, by observing that the request made by the petitioner for personal hearing is only with an intention to drag on the proceedings. In fact, in the impugned assessment orders, the respondent has verbatim extracted the objections which have been given by the petitioner, from which, it is seen that for each issue, the petitioner has given their explanations and for certain issues, the petitioner stated that at the time of personal hearing they would produce all the purchase bills and details furnished in their Annexures I & II of the Monthly Returns. In such circumstances, it has to

be seen as to whether the respondent could not have rejected such a request, by observing that it is a clandestine intention to drag on the proceedings.

5. The issue as to whether personal hearing should be granted or not came up for consideration in several decisions and consistently it has been held that when complicated issues are involved, an opportunity of personal hearing has to be afforded, though not specifically provided for in the statue. In fact, the petitioner in the objections has referred to the decisions of this Court, which have reiterated the need to give an opportunity of personal hearing. That apart, the petitioner has also pointed out that the reversal of input tax credit in the case of the petitioner for the reason that the earlier sellers reported less turnover or not paid tax on the sales effected to the petitioner, is incorrect in the light of the decisions of this Court in the case of M/s.Althaf Shoes (P) Ltd., Vs. Assistant Commissioner (CT) Valluvarkottam Assessment Circle reported in (2012) 50 VAR 179 (Mad) as well as in the decision of Sri Vinayaga Agencies Vs. Assistant Commissioner (CT), Vadapalani Assessment Circle reported in 60 VS 283 (Mad). However, the respondent while passing the impugned assessment orders has merely stated that those decisions are not applicable to the case of the petitioner. If in the opinion of the respondent the decisions do not support the petitioner's case or the issue which according to him had been decided in those cases are different, then, a duty is cast upon the respondent to assign reasons, as to how, he proposes / distinguish the decisions relied on. Therefore, the manner in which, the respondent brushed aside the decisions of this Court is, incorrect. Hence, on these two grounds alone, this Court is inclined to interfere with the impugned orders of assessment.

6. Accordingly, the Writ Petitions are allowed and the impugned orders are set-aside and the matters are remanded to the respondent for fresh consideration. The respondent shall issue notice to the petitioner calling upon them to appear for personal hearing, within a period of two weeks from the date of receipt of a copy of this order, during which, the petitioner is entitled to produce all documents in support of their stand and thereafter, the respondent shall proceed to complete the assessment in accordance with law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

r n s

To

The Commercial Tax Officer,
Broadway Assessment Circle,
199, Thambu Chetty Street,
Chennai-600 001.

+1cc to the Special Government Pleader(T), S.R.No.38402
+1cc to Mr.P.Rajkumar, Advocate, S.R.No.38336 (08.09.2016)

W.P.Nos.23488 to 23493 of 2016
&
W.M.P.Nos.20132 to 20137 of 2016

TM(CO)
CA(25/07/2016)