IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE:14.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.24072 to 24075 of 2016
&
WMP.Nos.20597 to 20600 of 2016

M/s.Parasakti Promotors
Rep. By, Partner,
Door No.New 163, Anna Salai,
Chennai - 600 002 .. Petitioner in all WPs.
(WP.No.24072 t0 24075/16)

Vs.

1.The Assistant Commissioner (CT),
Anna Salai Assessment Circle,
4th Floor, PAPJM Commercial Taxes Building,
Greams Road, Chennai - 600 006.

2.The Commercial Tax Officer,
Anna Salai Assessment Circle,
4th Floor, PAPJM Commercial Taxes Building,
Greams Road, Chennai - 600 006.

3.The Deputy Commercial Tax Officer,
Anna Salai Assessment Circle,
4th Floor, PAPJM Commercial Taxes Building,
Greams Road, Chennai - 600 006.
.. Respondents in all WPs.

Prayers: Petitions filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the third respondent in TIN: 33680600875/2011-12; dated 13.06.2016 TIN: 33680600875/2012-13 dated 13.06.2016: TIN: 33680600875/2013-14 dated 13.06.2016: TIN: 33680600875/2014-15 dated 14.06.2016 and quash the proceedings dated 13.06.2016 & 14.06.2016 with a direction to the competent authority to re-do the assessment with reference to the returns already filed by the petitioner.

In all WPs.
For Petitioner : Mr.MD.Ghafoor Ur Rahman

For Respondents : Mr.S.Kanmani Annamalai, AGP [Taxes]

COMMON ORDER

Heard Mr.MD.Ghafoor Ur Rahman, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondents and with their consent, the Writ Petitions itself are taken up for final disposal.

2.The petitioner is a Civil Works Contractor and is registered as a dealer under the provisions of the Tamil Nadu Value Added Tax Act, 2006 on the file of the 1st respondent. In these writ petitions, the petitioner has challenged the orders of assessment for the years 2011-2012, 2012-2013, 2013-2014, 2014-2015, primarily on the ground that an opportunity of personal hearing was not granted to the petitioner. Further, it is submitted by the learned counsel for the petitioner that the 3rd respondent himself has recorded in para 1 of page No.1 of the impugned order that the petitioner has filed monthly returns in Form - I and reported 'NIL' turnover in all the months, but arbitrarily has disregarded the same alleging that the petitioner having evaded purchases during the year 2011-2012; failed to report the corresponding sales in the year 2011-2012 and that has attempted to evade payment of tax amounting to escapement of assessment. Further, the learned counsel submitted that the petitioner in their objections has specifically stated that the 3rd respondent has no jurisdiction to complete the assessment. However, this aspect also has not been properly construed by the respondents. In any event, the assessment has been completed without affording an opportunity of personal hearing. Repeatedly, this Court has pointed out that when complicated questions of fact are involved, it will be appropriate for an Assessing Officer to afford an opportunity of personal hearing before completing the assessment. This having not been done in the instant cases, the impugned orders call for interference.

3.Accordingly, the Writ Petitions are allowed and the impugned orders are set aside and the matter is remanded to the 3rd respondent for fresh consideration and the 3rd respondent shall afford an opportunity of personal hearing to the petitioner and hear all the objections and while doing so, he shall first consider the objection raised by the petitioner regarding his jurisdiction to deal with the assessment. Thereafter, the other issues shall be considered by the 3rrd respondent. The above exercise shall be completed within a period of four weeks from the date of receipt of a copy of this order after affording a personal hearing. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To
1.The Assistant Commissioner (CT),
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4th Floor, PAPJM Commercial Taxes Building,
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Anna Salai Assessment Circle,
4th Floor, PAPJM Commercial Taxes Building,
Greams Road, Chennai - 600 006.

+4ccs to Mr., Advocate, S.R.No.10154
+1cc to M/s. E. Martin Jayakumar, Advocate, S.R.No.37119

AD(CO)
EU(01/08/2016)