IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.24250 to 24255 of 2016
and
WMP Nos.20721 to 20725 of 2016

W.P.No.24250 of 2016

M/s.Fomra Electronics Pvt., Ltd.,
Rep., by its Authorised Signatory,
No.123/250, Govindappa Naicken Street,
Chennai - 600 001. .. Petitioner in all the Writ Petitions

..Vs..

Assistant Commissioner, (CT),
Kothawalchavadi Assessment Circle,
Chennai - 600 001. .. Respondent in all the Writ Petitions

Prayer:
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, call for the records of the respondent and to quash the assessment proceedings in TIN No.33750180972/2008-09, 2009-2010, dated 25.05.2016, 2010-11, dated 25.05.2016, 2011-2012, dated 01.06.2016, 2012-2013, dated 02.06.2016 and 2013-2014, dated 02.06.2016 respectively, as illegal and direct the respondent to pass fresh orders after considering the reply letters filed by the petitioner in this case on 26.10.2015, and after providing an opportunity of personal hearing to the petitioner to prove the details of informations obtained from the departmental WEB SITE by the respondent are incorrect and illegal.

For Petitioner : Mr.C.Baktha Siromoni in all W.Ps.,

For Respondent : Mr.S.Kanmani Annamalai AGP

COMMON ORDER

Heard Mr.C.Baktha Siromoni, learned counsel for the petitioner, Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice on behalf of the respondent and with the consent of either side, the writ petitions are taken up for final disposal.

2. The petitioner, who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, (TNVAT Act), has filed these Writ Petitions challenging the assessment orders under the TNVAT Act for the years 2008-09 to 2013-14. Inspection was conducted by the Enforcement Wing Officials in the business premises of the petitioner on 05.03.2014. Based on such inspection a report is said to have been submitted to the respondent, resulting in a notice dated 26.06.2015, stating that during the course of inspection, on verification of the departmental intra-net website details, certain mismatch transactions were found between annexure I (purchase) of the petitioner and purchase dealer details from other dealers, annexure I and annexure II of the petitioner and the sales details from other dealers annexure I. Therefore, the respondent stated that there was sales suppression. The details of sales suppression as found in the respective annexures were extracted in the notice and it was proposed to determine the total and taxable turnover of the dealers for the relevant years. The respondent also proposed to levy appropriate penalty under the provisions of the TNVAT Act. The petitioner was granted 15 days time to submit their objections. The petitioner by representation dated 10.07.2015, requested extension of time to submit their objection stating that the Auditor and Tax Consultant were not available and therefore, prayed for 30 days time to submit their objections. The said objection was delivered in the office of the respondent on 10.07.2015, as evidenced by acknowledgment given in the letter delivery book. Thereafter, the petitioner submitted their objections on 24.10.2015, and in all the objections, the petitioner had specifically denied the allegations and stated that without calling for the accounts and verifying the same, the question of making an allegation of mismatch is incorrect and coming to such a conclusion solely based upon the report of the enforcement wing is not correct. These objections were received by the respondent on 26.10.2015, as could be seen from the acknowledgment given in the letter delivery book.

3. Subsequently, reminder notices were sent to the petitioner on 29.03.2016, stating that as if the petitioner has not filed any objections and one more opportunity was granted. The petitioner immediately sent further objection, dated 02.05.2016. In the said objection, specific request was made to provide an opportunity of personal hearing. The petitioner's specific case is that the objections were given in the first week of May 2016, along with the letter delivery book. However, since one of the officer was retiring on 30.06.2016, the

objection as well as the letter delivery book were retained by the Assessing officer and the signature was made, and acknowledgment given only on 04.07.2016, by then the impugned assessment order dated 25.05.2016 was passed and was received by the petitioner on 18.06.2016. On receipt of the impugned assessment orders, the petitioner was shocked to see that the respondent has stated that no objections have been filed by the petitioner. It is rather surprising as to why the respondent should have proceeded to complete the assessment ex parte, when there is sufficient proof to show that the petitioner's objections were received on 26.10.2015 itself. That apart, the specific request made by the petitioner for personal hearing has been ignored. If the allegation made by the petitioner that the letter delivery book was retained by the respondent for over one month and acknowledgment was given only on 04.07.2016, it is a very serious matter and if the petitioner brings it to the notice of the higher officials, then appropriate action should be taken on the same.

4. In the light of the above, it is manifestly clear that the impugned assessment orders are in total violation of principles of natural justice. Accordingly, the Writ Petitions are allowed and the impugned assessment orders are quashed and the matter is remanded to the respondent for fresh consideration. The respondent shall afford an opportunity of personal hearing, consider the petitioner's objections, and if there are any further doubts, the respondent shall call for the documents from the petitioner and peruse the same. Likewise, if the petitioner requires some details or documents, so as to effectively put forth their objections, that request also should be considered by the respondent. Thereafter, the respondent shall finalise the assessment in accordance with the provisions of the Act. The above direction shall be complied with, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

pbn

To

Assistant Commissioner, (CT),
Kothawalchavadi Assessment Circle,
Chennai - 600 001.

1 cc to Mr.C.Bakthasiromani, Advocate, sr.39500

W.P.Nos.24250 to 24255 of 2016

rj co
kra 01.08.2016