IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 22.07.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.25593 & 25594 of 2016 &
W.M.P.Nos.21953 & 21954 of 2016

Cheenu Enterprises,
Represented by its Partner,
P.Moorthy
252-B Mariyamman Kovil Street,
Peelamedu,
Pudur, Coimbatore-641 004. .. Petitioner in both Writ Petitions

Versus

The Assistant Commissioner,
Commercial Taxes,
Peelamedu Circle,
Coimbatore. .. Respondent in both Writ Petitions

Prayer in W.P.No.25593 of 2016: The 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 files of the respondent herein in CST No.288832/2012-13, dated 30.10.2015 (it must be 30.09.2015) served on 09.06.2016 and quash the same with the direction to re-do the assessment by considering their Application dated 24.06.2016 along with the personal hearing.

Prayer in W.P.No.25594 of 2016: The 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 files of the respondent herein in CST No.288832/2013-14, dated 30.09.2015, served on 09.6.2016 and quash the same with the direction to re-do the assessment by considering their Application dated 24.06.2016 along with the personal hearing.

For Petitioner in both Writ Petitions: Mr.N.Inbarajan

For Respondent in both Writ Petitions: Mr.S.Kanmani Annamalai Additional Government Pleader

COMMON ORDER

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

2. The petitioner-Company, which is a registered dealer on the file of the respondent, under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred as 'TNVAT Act'), has challenged the order of assessments viz., for the year 2012-13, dated 30.10.2015 and for the year 2013-14, dated 30.09.2015, passed by the respondent.

3. In so far as for the year 2013-2014, it is evident that the order has been passed well before the expiry of 15 days time granted to the petitioner for submitting their objections to the pre-revision notice dated 12.09.2015 and served on the petitioner on 29.06.2015. On 09.10.2015, the petitioner has submitted his objections along with revised return, however, without taking note of the same, the Assessment Order has been passed on 30.09.2005 itself well before the expiry of the 10 days period, which expires only on 10.10.2015. Therefore, there is violation of principles of natural justice.

4. So far as the Assessment year 2012-2013, as the petitioner had filed objections along with revised return along with documents and it is shown that the revised return along with objections were served in the Office of the respondent as per the endorsement in the letter delivery book and a copy of which has been placed in page No.36 of the typed-set of papers. However, in the impugned assessment, there is absolutely no reference to the objections made or the revised return which are being filed by the petitioner.

5. In the light of the above, this Court is of the view that the Assessments require to be re-done, after due opportunity to the petitioner however without setting aside the impugned proceedings, the impugned proceedings are directed to be treated as show-cause notices by the petitioner and submit further objections within a period of 15 days form the date of receipt of a copy of this order, after which, the respondent shall afford an opportunity of personal hearing to the petitioner, consider the documents filed by the petitioner including revised return and re-do the Assessments in accordance with law. As this court has directed the impugned proceedings to be treated as show-cause notices, the question of enforcing the demand of tax as assessed in the impugned proceedings does not arise and it shall abide by the further orders to be passed by the respondent in terms of the above direction.

6. Accordingly, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

r n s

To

The Assistant Commissioner,
Commercial Taxes,
Peelamedu Circle,
Coimbatore.

+1cc to M/s. N. Inbrajan, Advocate, S.R.No.41611
+1cc to the Government Pleader, S.R.No.41921

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RP(CO)
Eu 16.8.16