IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 03.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.26958 & 26959 of 2016 &
W.M.P.Nos.23177 & 23178 of 2016

S.Kamaraj .. Petitioner in both Writ Petitions

Versus

The Commercial Tax Officer, (FAC),
Mannargudi Assessment Circle,
Thiruvarur District. .. Respondent in both Writ Petitions

Prayer in both Writ Petitions: These Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus to call for the records of the respondent in his proceedings in TIN No.33133861299/2009-10 and 2010-11, dated 28.06.2016 and quash the orders passed therein and to direct the respondent to pass fresh orders after giving an opportunity of personal hearing and pass fresh orders considering the replies filed by the petitioner on 24.05.2016 as per Section 5 of TNVAT Act.

For Petitioner in both Writ Petitions : Mr.C.Baktha Siromoni

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

O R D E R

Heard Mr.C.Baktha Siromoni, 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, who 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 impugned Assessment orders passed by the respondent for the years 2009-10 and 2010-11, on the only ground that opportunity of personal hearing was not granted to the petitioner.

3. It is not in dispute that the re-assessment has been done under Section 22 of TNVAT Act. In terms of proviso to Section 22(4) of TNVAT Act, before taking action under Section 22(4), the dealer should be given a reasonable opportunity of being heard. However, this opportunity has been denied to the petitioner.

4. The learned counsel for the petitioner would submit that if the petitioner had been afforded an opportunity of personal hearing, the petitioner would have been in a position to explain that he has undertaken civil contract works like widening of roads and also construction of small bridges and those civil contracts are liable to be taxed under Section 5 of TNVAT Act and for the levy of tax, only the goods purchased and used in the works contract on the deemed sales are taxable under works contract. Further, the learned counsel for the petitioner referred to the Circular issued by the Commissioner of Commercial Taxes, dated 20.04.2001, wherein, the Commissioner has reiterated Statutory Provision and stated that opportunity of personal hearing should be provided to the assessee before levying tax and imposing penalty. It is submitted that this Circular issued by the Commissioner will hold good, even under the TNVAT Act.

5. The learned counsel for the petitioner submitted that the petitioner is ready and willing to pay a portion of the tax as computed in the impugned Assessment orders without prejudice to his rights and he may be afforded an opportunity to go back before the Assessing Officer to explain the nature of transaction.

6. I heard the learned Additional Government Pleader on the above submissions.

7. Considering the facts and circumstances of the case, when admittedly, the respondent has not afforded an opportunity of personal hearing to the petitioner, the impugned orders would definitely call for interference. But, however, in the light of the reason assigned by the respondent in the impugned orders, which was after taking into consideration the petitioner's replies dated 09.11.2015 and 24.05.2016, this Court is of the view that the petitioner should be put on terms to be entitled for further opportunity before the respondent.

8. Accordingly, the petitioner is directed to pay 15% of the disputed tax for each of the Assessment years, within a period of three weeks from the date of receipt of a copy of this order and if the same is paid, then, the petitioner would be entitled to treat the impugned proceedings as show-cause notices and submit further objection within a period of two weeks thereafter and on receipt of the objections, the

respondent shall afford an opportunity of personal hearing to the petitioner and redo the Assessments in accordance with law. Since this Court has directed the impugned orders to be treated as show-cause notices, subject to compliance of the condition mentioned above, the question of recovering the remaining tax or penalty as computed in the impugned Assessment orders would not arise and it shall abide by the fresh orders to be passed by the respondent in terms of the above direction. However, if the petitioner fails to remit 15% of the disputed tax for each of the Assessment years in terms of the above direction, within the time permitted, the benefit of this order will not enure to the petitioner and the Writ Petition shall stand automatically dismissed, as not maintainable, leaving it open to the petitioner to avail other remedies under the TNVAT Act.

With the above observations, the Writ Petitions are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

r n s

To

The Commercial Tax Officer, (FAC),
Mannargudi Assessment Circle,
Thiruvarur District.

+1cc to Mr.C.Baktha Siromoni, Advocate, S.R.No.43828
+1cc to the Government Pleader, S.R.No.44277

PVS(CO)
EU(31/08/2016)

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