

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.27433 to 27438 of 2016

and

W.M.P.Nos.23634 to 23639 of 2016

Tvl.K.S.J.Metal Impex Pvt. Ltd.,
Rep. by its authorized signatory
Mr.Amit Kumar Prakh
Prince Apartments, 7th Floor,
No.59, Ormes Road,
Kilpauk, Chennai - 10. ..Petitioner in all W.Ps

Vs

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai. ..Respondent in all W.Ps.

Prayer in W.P.No.27433 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33291003203/2011-12 dated 18.07.2016 and quash the same.

Prayer in W.P.No.27434 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33291003203/2012-13 dated 18.07.2016 and quash the same.

Prayer in W.P.No.27435 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33291003203/2013-14 dated 18.07.2016 and quash the same.

Prayer in W.P.No.27436 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in TIN No.33291003203/2014-15 dated 18.07.2016 and quash the same.

Prayer in W.P.No.27437 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in CST/1006996/2012-13 dated 18.07.2016 and quash the same.

Prayer in W.P.No.27438 of 2016: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondent in CST/1006996/2014-15 dated 18.07.2016 and quash the same.

For Petitioner
in all W.Ps. : Mr.S.Raveekumar

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

COMMON ORDER

Heard Mr.S.Raveekumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) accepts notice on behalf of the respondent and with their consent, these Writ Petitions were taken up for final disposal.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (hereinafter referred to as the TNVAT Act). In these writ petitions, the petitioner challenges the orders of assessment passed by the respondent for the assessment years 2011-12 to 2014-15. Since a common issue has been raised in all the writ petitions, they were heard together and disposed of by this common order.

3.The petitioner's place of business was visited by Enforcement Wing Officials on 30.06.2014 and during the course of inspection, certain defects were noticed under the provisions of the CST Act for the relevant assessment years, namely, (1) Interstate Sales (C-Forms not filed), (2) Reversal of Input Tax Credit under Section 19(5)(c) (C-Forms not filed), (3) Consignment Sales (F-Forms not filed) (4) Reversal of Input Tax Credit under Section 19(4) (F-Forms not filed). The petitioner by their representation dated 05.07.2016 stated that the pre-revision notice was received by them on 23.06.2016 and since the documents relating to their purchase and sales are voluminous they require considerable time to take Photostat copies and arrange them sequentially for submitting the same to the respondent. Further they stated that their Tax Consultant is not in station and requested to extend the time by four weeks to submit their objections and necessary documents. Further by referring to the decision of this Court it was pointed out that an opportunity of personal hearing should also be given to them after the objections are submitted by specifying a date and time so that the petitioner can appear and explain their documents

and transactions. Further, the petitioner requested furnishing a copy of th proposal received from the Deputy Commissioner (CT), Enforcement Central and grant four weeks to file objections and then fix a date for personal hearing.

4.The respondent received the petitioner's letter dated 05.07.2016 and has in fact extracted the contents of the letter in the impugned assessment orders. However erroneously the respondent had stated that the representation was an objection and it is not acceptable. The finding rendered by the respondent is absolutely erroneous since the petitioner did not file any objections and all they requested was to grant four weeks time to file their objections and then fix a date for personal hearing. Therefore, the impugned order is an outcome of total non-application of mind and this is sufficient to set aside the same and remand the matter for fresh consideration.

5.Accordingly the writ petition is allowed and the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration. The respondent is directed to furnish the copy of the proposal received from the Deputy Commissioner (CT), Enforcement Central within a period of two weeks from the date of receipt of a copy of this order and thereafter the petitioner should be granted three weeks time to file their objections along with the documents such as F-Forms and C-Forms and after receiving the objections, the respondent shall accept the Forms, namely, F-Forms and C-Forms if in order, and scrutinize their objections, afford an opportunity of personal hearing and re-do the assessment on merits and in accordance with law without in any manner being solely influenced by the proposal received from the Deputy Commissioner (CT), Enforcement Central. No costs. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

Sd/-

Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cse

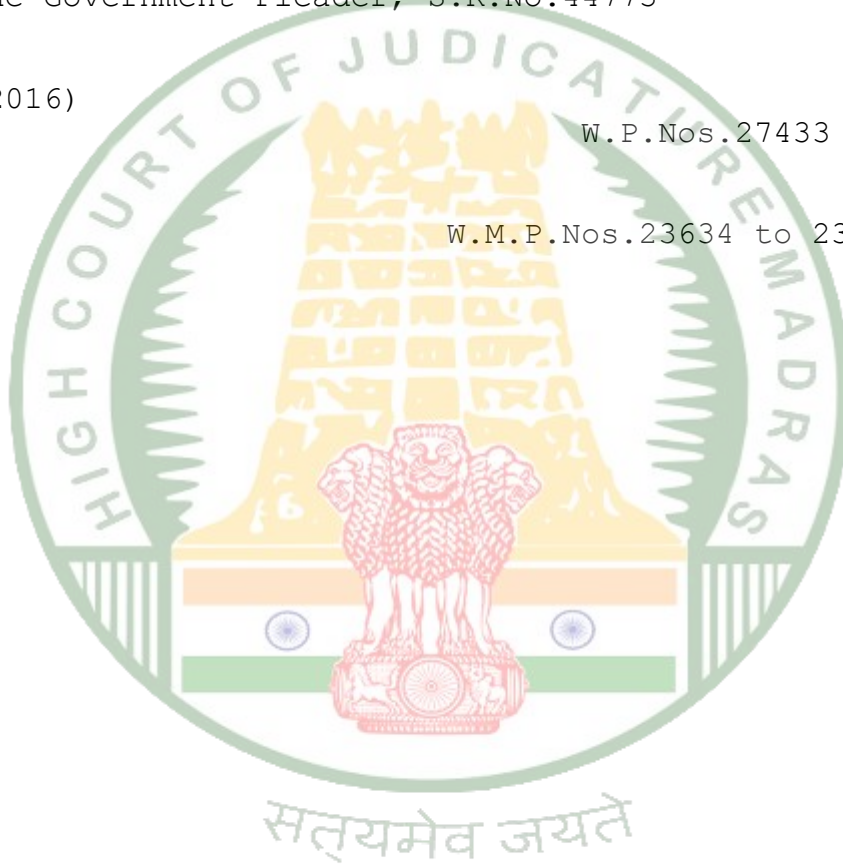
To

The Commercial Tax Officer,
Ayanavaram Assessment Circle,
Chennai.

+6ccs to Mr.S. Raveekumar, Advocate, S.R.No.44948
+1cc to the Government Pleader, S.R.No.44773

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

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