IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.28643 to 28651 of 2016 &

WMP Nos.24704 to 24721 of 2016

Bhari Metal Fabrication (P) Ltd.,
rep. by its Managing Director
G.Dastagir, Chennai. .. Petitioner in all WPs.

..Vs..

The Assistant Commissioner
Commercial Taxes
Nandambakkam Assessment Circle
Chennai 600 094.
.. Respondent in all Wps.

Prayer :
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records on the files of the Respondent herein in CST No.722152/2012-13 dated 27.08.2015 No.33050842412/2010-11, dated. 30.10.2015 No.33050842412/2011-12,dated.26.08.2015, No.33050842412/2012-13, dated.27.08.2015, No.33050842412/2013-14, dated 27.08.2015, No.33050842412/2010-11, dated. 25.08.2015, No.33050842412/2011-2012,dated. 30.10.2015, No.33050842412/2012-2013, dated 30.10.2015 and No.33050842412/2013-2014, dated 30.10.2015. and quash the same and direct the respondent herein to redo the revision proceedings under Section 27(1) of the Act, after providing an opportunity to file objections and personal hearing.

For Petitioner : Mr.N.Inbarajan
For Respondent : Ms.Vasudha Thiagarajan
Addl.Government Pleader

C O M M O N O R D E R

Heard Mr.N.Inbarajan, learned counsel for the petitioner and Ms.Vasudha Thiagarajan, learned Additional Government Pleader, accepting notice on behalf of the respondent. By consent, these 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, 2006 [TNVAT Act], and Central Sales Tax Act, 1956 [CST Act], has come forward with these Writ Petitions, challenging the orders of assessment and penalty proceedings initiated under the TNVAT Act, 2006 and CST Act, 1956.

3.The first contention raised by the learned counsel for the petitioner is that no notice was received by the petitioner before the impugned assessment orders were passed and for the first time, they came to know of the assessment orders and orders levying penalty, only when they received a communication dated 27.4.2016 (wrongly typed as 27.4.2015), wherein the respondent stated that the petitioner is liable to pay a total sum of Rs.5,06,70,606/- towards tax and penalty under the TNVAT Act for the years 2010-2011 to 2013-2014 and under the CST Act for 2012-2013 and 2013-2014.

4.To verify the correctness of the submissions, the Court directed the learned Additional Government Pleader to get instructions. Promptly, the learned Additional Government Pleader has produced the Original Files, from which it is seen that all the show cause notices have been received by the petitioner on 03.07.2015 itself and apart from the signature, the round seal of the Company has been affixed.

5.The learned counsel for the petitioner made an endevour to submit that the notices and orders might have been served on one Mr.Ganesan, however, the said person left the services of the petitioner Company abruptly, without any intimation.

6.This submission made by the petitioner is unbelieveable for the reason that apart from the signature acknowledging the receipt of the notices and orders, round seal of the Company has been affixed. Therefore, when the seal of the Company is affixed and the concerned officer has signed, it is presumed that the notices were received by the petitioner. Therefore, the submissions made by the petitioner in this regard stand rejected.

7.The learned counsel for the petitioner submitted that the petitioner has got an excellent case on merits and if an opportunity is given to the petitioner to appear before the Assessing Authority, they will be in a position to establish their case.

8.Though it is stated by the learned counsel for the petitioner that pursuant to the orders of attachment, certain amounts have been withdrawn from the petitioner's Bank, but the learned counsel does not have any specific instructions as to how much amount has been recovered by the Department towards tax and penalty. Therefore, considering the fact that there are several issues involved in the assessment process and the assessment has been completed on the ground that the petitioner has not been able to satisfy their case, this Court is inclined to grant liberty to the petitioner to go before the Assessing Officer, but, subject to certain conditions.

9.Accordingly, the petitioner is permitted to pay 15% of the disputed tax which has been quantified both under the TNVAT Act and CST Act, being Rs.2,23,66,264/-. This payment should be over and above the amount if any already recovered from the petitioner's Bank Account. The petitioner is granted eight weeks time to effect the payment. If the petitioner effects payment, then they are entitled to treat the impugned orders as show cause notices and submit their objections, along with the documents and on receipt of the objections, the respondent shall afford an opportunity to the petitioner and redo the assessment in accordance with law. However, if the petitioner fails to comply with the above condition within the time stipulated, the benefit of this order will not enure to the petitioner and the Writ Petitions will stand dismissed, leaving it open to the respondent to levy 20%, as ordered in the impugned order.

The Writ Petitions are dismissed with the above observation. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rpa

To
The Assistant Commissioner
Commercial Taxes Nandambakkam Assessment Circle
Chennai 600 094.

+1 CC to M/s. N. Inbarajan, Advocate Sr.No.47265
+1 CC to Special Govt., Pleader (Taxes), HC, Madras, Sr.No27249

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SVI (CO)
MD : 14/09/2016