IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.28957 to 28963 of 2016
and
W.M.P.Nos.25031 to 25037 of 2016

M/s.Danube Enterprises
Represented by its Proprietrix
Syed Ali Fathima
93, Peters Road, New College Commercial Complex
Royapettah, Chennai - 14.

.. Petitioner in all the WPs

..Vs..

The Commercial Tax Officer
Royapettah Assessment Circle
46, Greenways Road, Chennai - 28.

.. Respondent in all the WPs

Prayer in W.P.No.28957/2016
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2007-08 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28958/2016
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2008-09 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28959/2016
Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2009-10 dated 15.06.2016 and quash the same with the direction to the

respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28960/2016

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2010-11 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28961/2016

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2011-12 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28962/2016

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2012-13 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

Prayer in W.P.No.28963/2016

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records of the respondent in TIN 33230721645/2013-14 dated 15.06.2016 and quash the same with the direction to the respondent to consider the objection dated 14.09.2015 & 21.01.2016 by affording an opportunity of personal hearing.

For Petitioner
in all the WPs : Mr.R.Kumar
For Respondent
in all the WPs : Mr.S.Kanmani Annamalai, A.G.P.,

COMMON ORDER

Heard Mr.R.Kumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader appearing for the respondents.

2.The petitioner has challenged the orders of assessment dated 15.06.2016 under the provisions of the Tamil Nadu Value

Added Tax Act, 2006 [TNVAT Act] for the years 2007-08 to 2013-14. All the orders have been passed on the same date, though they are separate orders.

3.At the time when the case was heard for admission on 19.08.2016, this Court recorded the submissions of the petitioner that though the trading profit and loss account, balance sheet, reconciliation statement, copy of monthly returns, sales abstract and copy of commission received ledger were all enclosed as documents in the objections filed by the petitioner to the pre-revision notice, the Assessing Officer while completing the assessment stated that the documents have not been filed.

4.Further, the contention of the petitioner was that though the petitioner had specifically sought for an opportunity of personal hearing, the same was not granted. Therefore, the learned Additional Government Pleader was directed to get instructions from the Assessing Officer on the above submission.

5.Accordingly, the Assessing Officer has given a reply to the learned Special Government Pleader vide letter dated 22.08.2016, in which it has been stated that for the assessment years 2007-08 to 2013-14, the petitioner did not seek for personal hearing, but only for the year 2014-15, the petitioner had sought for personal hearing.

6.However, the communication does not specifically state as to why the respondent had stated that none of the documents were produced by the petitioner. On a perusal of the documents filed in the typed set of papers, it is seen that the petitioner has produced the documents referred above along with the reply. Though the petitioner might not have specifically sought for personal hearing while giving reply to the pre-revision notice for the assessment years 2007-08 to 2013-14, when a separate notice was issued for the assessment year 2012-13, dated 21.01.2016, the petitioner gave a detailed reply along with enclosures on 28.01.2016, wherein a specific request was made for personal hearing.

7.Furthermore, the transaction in respect of all the assessment years is identical and when the respondent chose to pass a separate assessment orders for all the years on the same date, nothing prevented the respondent from affording an opportunity of personal hearing.

8.The necessity to offer personal hearing has been emphasized by this Court in several decisions, since an assessment proceedings is a complicated matter which involves dialogue and discussion with the dealer. Therefore, several issues could be sorted out if personal hearing is granted in which the dealer can be called upon to clarify all the doubts. This will ensure that the assessments are completed in a proper manner without any loopholes and the revenue to be collected by the Government is collected in full.

9.In the light of the fact that an opportunity of personal hearing was not granted to the petitioner and the documents produced by the petitioner was stated to have not been produced, this Court is of the view that the assessment should be redone in a proper manner.

10.Accordingly, the writ petitions are allowed and the impugned orders are set aside. The matters are remitted to the respondent to redo the assessment afresh for all the assessment years, after affording an opportunity of personal hearing and perusing the documents that are produced by the petitioner. Further, the petitioner is at liberty to produce any other documents that are in their custody during the course of personal hearing. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

pgp

To

The Commercial Tax Officer
Royapettah Assessment Circle
46, Greenways Road, Chennai - 28.

+1 CC to M/s. R. Kumar, Advocate, Sr.No.48471
+1 CC Special Govt., Pleader, (Taxes), Sr.No.48502

W.P.Nos.28957 to 28963 of 2016 and
W.M.P.Nos.25031 to 25037 of 2016

CTK (CO)
MD : 12/09/2016