IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.No.29372 of 2016 &
W.M.P.No.25390 of 2016

M/s Dynatech
rep. by its Proprietor .. Petitioner

..Vs..

The Assistant Commissioner (CT)
Villupuram-I Assessment Circle
Villupuram. .. Respondent

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the impugned proceedings of the respondent in TIN:33244682/2013-14 dated 15.6.2016, and quash the same as passed without granting reasonable opportunity including that of a personal hearing to the petitioner and further direct the respondent to consider the objections dated 27.01.2016 filed by the petitioner and provide the details requested by the petitioner and pass a fresh assessment order in accordance with law.

For Petitioner : Mr.P.Rajkumar

For Respondent : Mr.K.Venkatesh
Govt.Advocate

O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned Government Advocate accepting notice on behalf of the respondent. By consent, the writ petition itself is taken up for final disposal.

2.The petitioner has come forward with this Writ Petition challenging the proceedings of the respondent dated 15.6.2016.

3.The petitioner is a dealer in excavators and its spares and a registered dealer on the files of the respondent under the provisions of Tamil Nadu Value Added Tax, 2006 [TNVAT Act] and also under the provisions of the Tamil Nadu Tax on the Entry of Motor Vehicles into the Local Area Act [Entry Tax Act]. During the assessment year 2013-14, the petitioner effected inter-state purchases of excavators from M/s JCB India Limited, Ballabgar, Haryana State and paid entry tax under the Entry Tax Act. The spares for excavators were said to have been purchased from the local suppliers on payment of VAT and also from suppliers in other States. The petitioner further stated that with regard to the sales of excavators to local customers, they used to collect VAT and while making the payment of VAT to the Department, they would adjust the entry tax paid on the purchase of such excavators from other State suppliers.

4.Surprise inspection was conducted by the Enforcement Wing Officials in the place of business of the petitioner from 10.03.2015 to 12.03.2015 and based on the report submitted by the Enforcement Wing Officials, the respondent issued Pre-Revision Notice dated 30.11.2015, pointing out certain defects. Based on the defects which were pointed out by the Enforcement Wing Officials, the petitioner submitted a detailed objection on 27.01.2016.

5.It may not be necessary to refer to the merits of the objections, since the order impugned in this Writ Petition is challenged on the ground of violation of principles of natural justice. It is not in dispute that in the explanation given by the petitioner to the Pre-Revision Notice dated 30.11.2015, the petitioner has specifically pleaded for an opportunity of personal hearing. However, the respondent has not discussed the objections given by the petitioner dated 30.11.2015 and completed the assessment. Further, before completing the assessment, the respondent did not afford an opportunity of personal hearing to the petitioner.

6.Time and again, this Court has emphasised the need for giving an opportunity of personal hearing, since the order of assessment to be passed by a process of dialogue and discussions. In the instant case, the petitioner has pointed out that the Web Report copy showing the details of alleged difference between Annexure II of the other end dealers and with that of the petitioner's Annexure-I, was not provided to them either by the respondent or by the Inspecting Officers. This is one more reason, the petitioner stated that they were unable to submit an effective objections. Inspite of the petitioner's explanation that the difference would have occurred due to the fact that the supply made from their Branch in Pondicherry would have wrongly noted the TIN Number of the petitioner's Registration in Tamil Nadu, the respondent has confirmed his proposal. Since the petitioner was not provided with the details, they were unable to submit proper objections.

7.In the light of the fact that the petitioner has not been afforded an opportunity of personal hearing, this Court is of the view that the assessment should be redone, after giving details of the Web Report and giving an opportunity to the petitioner to submit additional objections, finalise the assessment, after affording the opportunity of personal hearing to the petitioner.

8.Accordingly, the Writ Petition is allowed, the impugned order is set aside and the matter is remanded to the respondent for fresh consideration, with a direction to the respondent to furnish copy of the Web Report details, based on which the impugned pre-revision Notice dated 30.11.2015 was issued and afford fifteen days time to the petitioner to submit additional objections and after granting the opportunity of personal hearing to the petitioner, the assessment should be redone in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

The Assistant Commissioner (CT)
Villupuram-I Assessment Circle
Villupuram.

+1cc to the Special Government Pleader Sr.48938
+1cc to Mr.P.Rajkumar, Advocate sr.48658

W.P.No.29372 of 2016

ppa[co]
srg 21/09/2016