IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2016

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.30875 to 30878 of 2016
& W.M.P.Nos.26738 to 28 to 26741 of 2016

Sri Krishna Refineries,
Rep.by its Managing Partner,
K.Karthikeyan,
74 Park Road,
Erode-638 003 .. Petitioner in all the W.Ps.

Vs.

The Assistant Commissioner (CT) FAC,
Park Road Circle,
Erode .. Respondent in all the W.Ps.

Prayer: Petitions filed under Article 226 of the Constitution of India for the issuance of Writ of Certiorari calling for the records on the files of the respondent in TIN 33922860067/2010-11, 2011-12, 2012-13 and 2013-14, dated 29.07.2016, respectively, and quash the same.

For Petitioner : Mr.N.Sriprakash

For Respondent : Mr.K.Venkatesh,
Government Advocate

COMMON ORDER

Heard Mr.N.Sriprakash, the learned counsel for the petitioner and Mr.K.Vekatesh, the learned Government Advocate, who accepts notice on behalf of the respondent and with the consent of either side, the writ petitions are 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 (TNVAT Act), and the Central Sales Tax Act, 1956. In these writ petitions, the petitioner has challenged the orders of assessment for the years 2010-11, 2011-12, 2012-13

and 2013-14, dated 29.7.2016, respectively, which have been served on the petitioner in person, on 10.08.2016. The impugned orders have been challenged on the ground of violation of principles of natural justice. However, the facts clearly show that the petitioner was not diligent in immediately submitting their objections. The pre-revision notices dated 4.4.2016 were served on the petitioner on 18.4.2016 and they were granted 15 days' time to submit their objections. The petitioner did not file their objections, but requested for further time for filing objections up to 30.5.2016. Though this letter was specifically accepted by the respondent, the same was neither considered by the respondent nor the request was rejected. Once again by another letter dated 30.5.2016, the petitioner requested extension of time till 30.6.2016. This was followed by another letter dated 27.6.2016, requesting time till 15.8.2016. Thus, the assessing officer was of the view that the petitioner was not willing to co-operate in the assessment proceedings and they had no intention of submitting their objections and participating in the assessment proceedings. Therefore, he passed the impugned orders on 29.7.2016, which have been served on the petitioner on 10.08.2016.

3. At the time when the writ petitions were heard for admission, on 2.9.2016, it was pointed out by the learned counsel for the petitioner that the first of the objections was filed by the petitioner on 25.7.2016 and acknowledged by the office of the respondent on 26.7.2016. To prove the same, copy of the Letter Delivery Book was produced. It was further submitted that another objection dated 29.7.2016 was served in the office of the respondent, on 5.8.2016. To prove the same, copy of the Letter Delivery Book was produced. Therefore, it is the case of the petitioner that though the objections dated 25.7.2016 and 29.07.2016 were on the file of the respondent, the assessments have been completed ex-parte stating that the petitioner has not filed objections. Considering the above submissions this Court passed the following order, on 2.9.2016:

> "The impugned assessments have been completed on the ground that the petitioner has not filed objections.
>
> 2. The petitioner, on receipt of the pre-revision notices, had sought adjournment on three occasions, after which, the respondent issued another notice on 13.7.2016, granting time to submit objections by 25.7.2016. The petitioner's case is that the first of such objections was given on 25.7.2016, acknowledged by the officer on 26.7.2016, as could be seen from the copy of

> the letter delivery book. The petitioner would state that thereafter another objection was given and served in the office of the respondent on 5.8.2016. However, the impugned order has been passed on 29.7.2016 without reference to the objection dated 25.7.2016 and the same having been served on 10.08.2016 in person, on the dealer. The petitioner would contend that nothing prevented the respondent from considering the objection dated 5.8.2016.
>
> 3. The learned Additional Government Pleader accepting notice on behalf of the respondent seeks time to get instructions.
>
> 4. List the matter on 09.09.2016, at the end of motion list. Till then, no coercive action shall be taken against the petitioner."

4. In terms of the above direction, the learned Additional Government Pleader had promptly obtained written instructions from Thiru R.Sivasubramaniam, the Assistant Commissioner (CT), (FAC), Park Road Circle, Erode.

5. From the written instructions it is seen that the respondent has accepted the fact that they have received the petitioner's letter, dated 25.7.2016, but however, has taken a stand that the petitioner has not produced any supporting records to substantiate the stand taken in the said letter, dated 25.7.2016. So far as the letter dated 29.7.2016, the respondent would state that it was received in his office only on 08.08.2016. The respondent having accepted the fact that the petitioner's letter, dated 25.7.2016, was received in his office, should have referred the same in the impugned orders and afforded an opportunity of personal hearing to the petitioner and completed the assessments.

6. So far as the letter dated 29.7.2016, there is prima facie proof to show that the office of the respondent has received the letter on 05.08.2016, as per the Letter Delivery Book. Since the office of the respondent is not in the habit of issuing any computerised acknowledgment for receipt of replies, adjournment requests etc, it appears to be a standard practice in the Sales Tax Department to give acknowledgments in the Letter Delivery Book. Therefore, this Court does not propose to disbelieve the stand taken by the petitioner.

7. In the light of the above conclusion, this Court is of the view that there has been violation of principles of

natural justice and the assessments should be re-done, after adequate opportunity to the petitioner.

8. In view of the above discussion, the writ petitions are allowed, the impugned assessment orders are set aside and the matter is remanded to the respondent for fresh consideration. The petitioner is at liberty to file additional objections along with the copies of supporting documents, within 15 days from the date of receipt of a copy of this order and on receipt of the further objections, the respondent shall afford an opportunity of personal hearing to the petitioner and consider the objections and the documents that the petitioner may produce and re-do the assessments in accordance with law. It is made clear that the petitioner shall co-operate in the assessment proceedings and will not be entitled to seek for adjournment.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To
The Assistant Commissioner (CT) FAC,
Park Road Circle,
Erode

1 cc to Mr.N.Inbarajan, Advocate, sr.51287
1 cc to Special Government Pleader, sr.51527

W.P.Nos.30875 to 30878 of 2016

bvr co
kra 27.9.2016