IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 15.09.2016

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.Nos.32170 to 32172/2016 & WMP.Nos.27908 to 27910/2016

M/s.Neelkanth Agencies
rep.by Proprietor, No.83/1,
4th Shop, Varads Muthiappan St.,
George Town, Chennai 600 001. .. Petitioner in all the writ petitions

Versus

The Assistant Commissioner
[CT], Mannady Assessment Circle
No.199, 4th Floor, Thambu Chetty
Street, Chennai 600 001. .. Respondent in all the writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the impugned proceedings of the respondent in TIN Nos.33381262386/2013-14 ; 33381262386/2014-15 ; and 33381262386/2015-16 and quash the order dated 30.09.2015 as the same has been passed based on the details gathered from the Departmental Website and so contrary to the provisions of the TNVAT Act and also against the principles of natural justice and further direct the respondent to provide all the documents relating to the other end dealers sales annexure [Annexure II] to grant opportunity to the petitioner to cross examine them and thereafter, to file objections and then to pass orders in accordance with law.

For Petitioner in all the writ petitions : Mr.P.Rajkumar

For Respondent in all the writ petitions : Mr.K.Venkatesh, GA [Taxes]

COMMON ORDER

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate [taxes] accepting notice on behalf of the respondent and with the consent on 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]. In these writ petitions, the petitioner has challenged the orders of assessment for the Assessment Years 2013-14 ; 2014-15 and 2015-16.

3 The only ground on which the impugned orders have been questioned is on the ground that the petitioner did not have an opportunity to file their objections and the authority has completed the assessment ex-parte. However, on a perusal of the material papers filed along with these writ petitions, it is clear that the petitioner had received the pre-revision notices dated 02.09.2015 in which the respondent had given fifteen days time to submit their objections. However, the petitioner failed to avail the opportunity granted by the respondent and did not submit their objections. Therefore, the respondent had completed the assessment and confirmed the proposal in the pre-revision notices. The manner in which the impugned assessment have been completed, cannot be faulted as the petitioner did not avail the opportunity granted to them. Therefore, it is not a case wherein no opportunity was granted ; but it is a case where the petitioner failed to avail the opportunity. Thus, technically the petitioner cannot state that there is violation of principles of natural justice. However, the petitioner would state that the entire assessment has been re-done solely based upon the verification of the Department Website and if the petitioner had been furnished full details and if he had an adequate opportunity, they would have clearly explained tht all the transactions are genuine and the Selling Dealers are also registered within the State of Tamil Nadu and regularly filing the returns and paying taxes. On a perusal of the impugned Assessment Orders, it is seen that the respondent has not outrightly rejected all the transactions ; but would state that the sales reported by the Selling Dealers is not in proportionate to the purchase effected by the petitioner during the relevant Assessment Years. Therefore, it appears that the respondent would state that certain transactions done by the petitioner with those Selling Dealers are reflected ; but not all the transactions as reported by the petitioner in their return. If that is the case, then the petitioner could be afforded an opportunity so that they would be in a position to match the transactions and explain the same to the Assessing Officer. However, for grant of such an opportunity, the petitioner should be put on terms.

4 Accordingly, the petitioner is directed to pay 15% of the disputed tax for each of the Assessment Years within a period of five weeks from the date of receipt of a copy of this order. If the petitioner complies with the said condition, they would be entitled to treat the impugned proceedings as show

cause notices, submit their objections, within a period of two weeks thereafter along with the supportive documents and on receipt of the objections, the respondent shall afford an opportunity of personal hearing and if details are sought for by the petitioner, the same shall also be furnished and assessment shall be re-done in accordance with law. If the petitioner fails to comply with the conditional order passed by this Court, the benefit of this order, will not enure to the petitioner and the writ petition would stand automatically dismissed as not maintainable, leaving it open to the petitioner to avail the appellate remedy under the provisions of the act.

5 The writ petitions are disposed of with the above directions. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

To

The Assistant Commissioner
[CT], Mannady Assessment Circle
No.199, 4th Floor, Thambu Chetty
Street, Chennai 600 001.

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