IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.32498 to 32504 of 2016

Senthel Building Materials Manufacturing
Company Pvt. Ltd.,
rep. by its Managing Director
A.Senthelkumar ... Petitioner/ All Wps

vs.

The Assistant Commissioner (CT)
Ramnagar Circle
Coimbatore - 18. ... Respondent / in all Wps

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari to call for the records on the files of the respondent herein in TIN 33331980553/2007-08,2008-09, 2009-10, 2010-11, 2011-12, 2012-13, 2013-14 dated 31.07.2016 respectively.

For Petitioner (in all W.Ps) :Mr.C.Natarajan
Senior Counsel
for Mr.N.Inbarajan

For Respondent (in all W.Ps) :Mr.K.Vankatesh
Government Advocate

COMMON ORDER

Heard Mr.C.Natarajan, learned Senior Counsel, assisted by Mr.N.Inbarajan, learned counsel appearing for the petitioner and Mr.K.Venkatesh, learned Government Advocate. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for final disposal.

2.The petitioner-Company, who is the registered dealer on the file of the respondent under the provisions of the Tamil Nadu Added Tax Act, 2006 [TNVAT Act], has come forward with these Writ Petitions, challenging the orders of assessment for the years 2007-08 to 2013-14.

3.The learned Senior Counsel appearing for the petitioner elaborately made submissions on various issues and pointed out that there are many flaws in the impugned orders, but, as the first ground among several grounds raised, the learned senior Counsel stressed upon the point that the then Assessing Officer issued the pre-revision notices dated 31.08.2015 and for said notices, the petitioner submitted replies on 30.11.2015, and the said Assessing Officer had afforded an opportunity of personal hearing and heard the authorised representative in the matter. Subsequently, no orders were passed for almost one year and the impugned orders have been passed by the Officer, who was not the Officer who either issued the show cause notices or who conducted the personal hearing. It is submitted that this inherent defect affects the entire proceedings and the assessment orders are liable to be set aside.

4.In order to afford an opportunity to the respondent to such a contention raised, this Court directed the learned Government Advocate to get instructions in the matter. Accordingly, the respondent has issued instructions via E-Mail, from which it is seen that the present Assessing Officer on perusal of the files stated that for the relevant assessment years, the orders were passed based on the notices issued on 31.08.2015 and no subsequent notices were found to be issued before passing the orders dated 31.07.2016.

5.Though the written instruction is not very clear, one could decifer that the stand of the respondent was that he was not the Officer who issued the notices dated 31.08.2015. But, from the Files, it has been reported that after the said notices, no further notices were issued before passing the final orders. However, the fact remains that the petitioner's replies were available on the file of the respondent as the Assessing Officer have referred to the same in the impugned assessment orders. Thus, it is evidently clear that the person who issued the pre-revision notices and who heard the petitioner's authorised representative did not pass the impugned orders.

6.At this stage, it would be beneficial to refer to the decision of the Hon'ble Supreme Court in the case of AUTOMOTIVE MANUFACTURERS ASSOCIATION v. DESIGNATED AUTHORITY AND OTHERS [(2011) 2 SCC 258], wherein the Hon'ble Supreme Court referred to the decision in the case of SWADESHI COTTON MILLS v. UNION OF INDIA [66 (1981) 1 SCC 664] and pointed out that the person affected must have reasonable opportunity of being heard and the hearing must be a genuine hearing and not an empty public relations exercise. Further, it was pointed out that the personal hearing enables the authority concerned to watch the demeanour of the witnesses, etc., and also clear up his doubts during the course of the arguments. Referring the decision in GULLAPALLI NAGESWARA RAO v. A.P.SRTC [AIR 1959 SC 308], it was held that if one person hears and other decides, then personal hearing become an empty formality. In the said case, the entire material was collected by the predecessor of the designated authority and he had allowed the interested parties and/or their representatives to present the relevant information before him in terms of Rule 6(6) but the final findings in the form of an order were recorded by the successor designated authority, who had no occasion to hear the appellants therein and it was held to offend the basic principles of natural justice and the order was quashed.

7.The above referred decisions would squarely apply to the facts of the present case, as the person who heard the petitioner did not decide the matter. This is sufficient to hold that the impugned orders are not sustainable in law.

8.Accordingly, the Writ Petitions are allowed, the impugned orders are set aside and the matter is remanded to the respondent for fresh consideration, who shall issue notices to the petitioner, granting clear fifteen days time to produce the records and during the course of personal hearing, examine all the records and redo the assessments, in accordance with law. No costs. Consequently, connected miscellaneous Petitions are closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

rpa
To
The Assistant Commissioner (CT)
Ramnagar Circle
Coimbatore - 18.

+1 CC to Spl. Government Pleader, Taxes, Sr.No.53866
+1 CC to Mr. . Inbarajan, Advocate Sr.No.53775

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RSY (CO)
MD : 22/10/2016