IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.09.2016

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.32646, 32647 & 32690 of 2016 &
WMP Nos.28285 to 28288 & 28286 of 2016

V.Sakthivel. ... Petitioner in all W.Ps.

..Vs..

The Commercial Tax Officer
Panruti (Town) ... Respondent in all W.Ps.

Common Prayer:

Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the respondent in orders dated 14.09.2015, 28.03.2016 & 28.03.2016 in TIN No.33634481145/2011-12, 2012-13, 2013-14 and quash the same.

For Petitioner (in all W.Ps.) : Mr.Adithya Reddy

For Respondent (in all W.Ps.) : Mr.S.Kanmani Annamalai
Additional Government Pleader

C O M M O N O R D E R

Heard Mr.Adithya Reddy, learned Counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepting notice for the respondent. With the consent of the learned counsel appearing on either side, the Writ Petitions are taken up for hearing.

2.The petitioner has come forward with these Writ Petitions, challenging the impugned assessment orders passed by the respondent dated 14.09.2015 28.03.2016 & 28.03.2016, respectively, for the assessment years 2011-12, 2012-13, 2013-14.

3.The petitioner is a dealer in Cement and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006 [TNVAT Act]. In these Writ Petitions, the petitioner challenges the orders of assessment for three assessment years viz. 2011-12, 2012-13, 2013-14. The common ground of challenge is by contending that the impugned orders have been passed in violation of the principles of natural justice.

4.The respondent issued pre-revision notices dated 20.02.2015 and 07.08.2015, in respect of the assessment year 2011-12; in respect of assessment years 2012-13, 2013-14, the pre-revision notices were issued on 20.02.2015 dated 23.02.2015, respectively, on verification of the web-site of the Commercial Tax Department, stating that the web-site shows that the petitioner has effected purchases within the State of Tamil Nadu, and has submitted 'NIL' returns for the relevant years. The petitioner submitted a letter dated 26.3.2015, by stating that he is a small dealer and on account of health condition, he could not file the monthly returns in time and along with the letter dated 13.4.2015, the petitioner filed monthly returns for the relevant periods and requested the respondent to consider the same and allow the claim of ITC. The respondent examined the returns and appears to have once again made a verification/comparison with the data available in the Department web-site and came to the conclusion that the turnover reported by the petitioner in the monthly returns is lesser than the purchase details gathered from the Department web-site.

5.In the considered view of this Court, before doing so, the respondent should have given an opportunity to the petitioner to substantiate that the turnover reported by them in the return filed after the receipt of the pre-revision notices, is correct and if there are any discrepancies, the petitioner could have explained the same. Furthermore, even though the petitioner did not specifically seek for an opportunity of personal hearing, nothing prevented the Assessing Officer from calling upon the petitioner to appear before him and explain the discrepancies. However, this appears to have not been done and the assessment has been completed.

6.In the light of the above facts, this Court holds that the impugned orders have been passed in violation of principles of natural justice. However, for this reason this Court does not propose to set aside the impugned orders, but, would direct the petitioner to approach the respondent, collect details which are available with the respondent, as gathered by him from the Department web-site i.e. name of the dealer, TIN Number, value of the goods, etc., and after obtaining the details, the petitioner is directed to submit his additional objections, which shall be considered by the respondent after affording an opportunity of personal hearing and thereafter,the respondent shall redo the assessment in accordance with law. To ensure that the above order is effectively complied with, the petitioner is directed to appear before the respondent along with the copy of this order, within a period of one week from the date of receipt of a copy of this order. The respondent is directed to comply with the above directions and after affording a personal hearing, within a period of four weeks from the date on which the petitioner submits additional objections. Till the proceedings are completed, no coercive action shall be initiated against the petitioner.

Writ Petitions are disposed of on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rpa

To

The Commercial Tax Office
Panruti (Town).

+1cc to the Special Government Pleader(T), S.R.No.53067

W.P.Nos.32646, 32647 &
32690 of 2016

SV(CO)
CA(06/10/2016)