IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.09.2016

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THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

WP.Nos.34481 to 34483 of 2016
and WMP.Nos.29710 to 29712 of 2016

M/s.K.M.Seat Company Private Limited,
Rep. by its Manager-Finance
Mr.L.Iyappan,
Door No.89/466, Nathanallur Village,
Walajabad Post,
Kancheepuram District. .. Petitioner in all Wps

Vs

The Assistant Commissioner (CT),
Kancheepuram Assessment Circle,
Kancheepuram. .. Respondents in all Wps

Writ Petitions filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the impugned proceedings of the respondent in TIN.No.33351643467/2012-2013, TIN.No.33351643467/2013-2014 and TIN.No.33351643467/2014-2015 dated 29.08.2016 respectively and to quash the same as passed contrary to the principles of natural justice and against the provisions of the TNVAT Act.

For Petitioner in all WPs : Mr.P.Rajkumar

For Respondent in all WPs : Mr.S.Kanmani Annamalai, AGP (T)

C O M M O N O R D E R

Heard Mr.P.Rajkumar, learned counsel appearing for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice on behalf of the respondent. With the consent on either side, the Writ Petitions are taken up for disposal.

2. The petitioner is involved in assembling of welded car seat frame and registered on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax, 2006

[hereinafter referred to as "the Act"] and the Central Sales Tax Act, 1956. In these Writ Petitions, the petitioner challenges the orders of assessment dated 29.08.2016 for three Assessment Years, namely, 2012-2013, 2013-2014 and 2014-2015.

3. Though the learned counsel for the petitioner made elaborate submissions on the merits of the assessment, this Court clearly expressed to the learned counsel that if the petitioner seeks for canvassing the merits of the matter, he has to approach the Appellate Authority. Faced to this situation, the learned counsel focused on the point that the impugned order is in violation of Principles of Natural Justice and reasonable opportunity was not granted to the petitioner to take copies of the bills and file objections.

4. To examine the correctness of this submission, this Court carefully perused the impugned Assessment Orders and it is found that the Assessing Officer has recorded that in the audit proposal, it was categorically mentioned that the dealer has to file connected documents within 15 days from the date of receipt of the notice, failing which, proposal would be confirmed against the petitioner. On receipt of this notice dated 10.03.2016, the petitioner sent a letter on 28.03.2016 filing their objections and the Assessing Officer noted that the petitioner submitted their objections, but not produced any documentary evidence for verification by the Assessing Officer. Apart from that, they also requested for personal hearing. The Assessing Officer acted in a most reasonable manner and acceded to the request made by the petitioner and fixed the personal hearing on 21.04.2016. However, the petitioner in stead of appearing on the date fixed, they requested for another 30 days time for attending the personal hearing. Thereafter, four months they did not turn up and therefore, the Assessing Officer confirmed the proposal in the notice dated 10.03.2016 issued under Section 22[4] of the Act.

5. The above finding recorded by the Assessing Officer is sufficient to hold that the conduct of the petitioner was not acceptable and it has to be deprecated and it appears that the petitioner has taken the legal proceedings in India very lightly. This observation was made in the light of the finding recorded by the Assessing Officer that the petitioner was not inclined to cooperate in the assessment proceedings. This Court is unaware about the legal procedure, which is followed in their country and what would be the position, if the petitioner had done the same thing in their country. Nothing more is required to be added on this.

6. Faced with this situation, learned counsel for the petitioner would submit that the petitioner have got a good case on merits and it is unfortunate that they did not avail the opportunity as and when provided and sought to explain the same, as being for reasons beyond the control of the Management and therefore, pleaded that one opportunity may be

granted to the petitioner to go before the Assessing Officer and place all submissions and if such opportunity is granted, the petitioner will not seek for further time and will appear before the Assessing Officer.

7. In the light of the above submission, this Court is inclined to grant one more opportunity to the petitioner, but that will be subject to conditions. In the light of the above observations, the petitioner is directed to pay 15% of the disputed tax for each of the Assessment Years within a period of 10 days from the date of receipt of a copy of this order. If the same is done, then the petitioner is entitled to treat all the impugned orders of assessment as show cause notices and submit their objections to the same. However, if the petitioner wants any details, then he should appear before the Assessing Officer along with the copy of this order and request for the details and if copies are not available, he can take notes and from the said date within 15 days, the objections should be filed. On receipt of the objections, the respondent shall re-do the assessment in accordance with law. If the petitioner pays 15% of the disputed tax for all the three assessment years, no coercive steps shall be taken against the petitioner till the assessment is re-done. On the other hand, if the petitioner fails to remit the amount as quantified by this Court within the time permitted, the benefit of this order will not enure to the petitioner and the Writ Petition would stand automatically dismissed, without reference to this Court, leaving it open to the petitioner to workout their remedies in accordance with law.

With the above direction, the Writ Petitions are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Asst.Registrar (CS II)

/true copy/
Sub Asst. Registrar

gya

To
The Assistant Commissioner(CT),
Kancheepuram Assessment Circle,
Kancheepuram.

1 cc to Mr.P.Rajkumar, Advocate, sr. 56060
1 cc to Spl. Government Pleader, (Taxes), Sr. 56135

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