IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2016

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.35837 to 35842 of 2016
&
WMP.Nos.30778 to 30783 of 2016

M/s.Coral Rewinding India (P) Ltd.,
Rep., by its Managing Director,
Mr.P.Rajarajan,
Nasiyanoor Road,
Erode. ... Petitioner in all WPs

Versus

The Assistant Commissioner (CT),
Chithode Assessment Circle,
Erode. ... Respondent in all WPs

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari to call for the records of the respondent in his proceedings in TIN 33533063836/2008-09, 2009-11, 2010-12, 2010-11, 2012-13 & 2013-14 respectively and quash the order dated 08.09.2016 made therein.

For Petitioner : Mr.P.Rajkumar

For Respondents : Mr.K.Venkatesh,
Government Advocate

C O M M O N O R D E R

Mr.P.Rajkumar, learned counsel for the petitioner and Mr.K.Venkatesh, learned accepting notice on behalf of the respondents and with the consent of either side, the Writ Petitions itself are taken up for 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 (TNVAT Act) and in these Writ Petitions, the petitioner has challenged the orders passed by the respondent, dated 08.09.2016, rejecting the petitioner's application filed under Section 84 of the TNVAT Act to rectify the orders of assessment, dated 23.08.2016 for the Assessment Years 2008-09 to 2013-14.

3. The petitioner's contention is that the pre-revision notice was issued by the respondent on 09.07.2015, and the petitioner promptly submitted their objections on 07.10.2015. However, no orders were passed for almost one year and only on 23.08.2016, orders of assessment were passed. The petitioner's contention is that while passing the orders of assessment, the respondent has taken a different stand that what was proposed in a pre-revision notice dated 09.07.2015, since the delay in passing the order itself has resulted in great prejudice the petitioner immediately filed rectification applications under section 84 of the Act on 08.09.2016. The grievance of the petitioner is that on the very same day i.e., on 08.09.2016, itself, the petitions have been rejected for the very same reasons mentioned in the assessment orders. Further, the petitioner's main grievance is that the Assessing Officer could have afforded an opportunity to the petitioner to put forth their contentions, especially when the assessment orders came to be passed after one year, after the pre-revision notices were issued. In order to ascertain as to whether the petitioner had any opportunity to place their objections before the respondent on their applications filed under Section 84 of the TNVAT Act, the learned Government Advocate appearing for the respondent was directed to get instructions in the matter. Accordingly, the respondent has given written instruction to the learned Government Advocate dated 14.10.2016 and on a perusal of the same, it is evidently clear that the discussion only pertains to the order of assessment dated 23.08.2016 and the written instructions does not speak of any opportunity having been granted to the petitioner on the applications filed for rectification, dated 08.09.2016. From the fact that the applications were rejected on the very same day itself, it is clear that no opportunity was granted. When completing assessment, the Assessing Officer has to act as an independent authority, examine all the documents and records, which may be produced by the dealer.

4. In the instant case, the delay of one year, is definitely a matter, which has to be considered by the Assessing Officer, as it has worked to the prejudice for the dealer. While doing so, when the dealer has rightly invoked the power of the respondent under Section 84 of the TNVAT Act and filed rectification application, the minimum that is expected by the Assessing Officer, is to afford an opportunity to the dealer to put forth their contentions. However, this has not been done in this instant case.

5. Though the proviso under Section 84(1) contemplates an opportunity of being heard to be afforded to the dealer, only if under such rectification, it has an effect of enhancing an assessment or penalty, in the considered view of

this Court, when complicated factual issues are involved, it would be in fitness of things for the authority to afford an opportunity of personal hearing to the dealer and the time taken for such opportunity can hardly have any impact on the proceedings, especially in the case on hand, which has been prolonging for almost one year. Therefore, this Court is of the view that the respondent should reconsider the petitioner's applications for rectification, dated 08.09.2016, after affording an opportunity of personal hearing.

6. Accordingly, the Writ Petitions are allowed, the impugned orders of assessment are set aside and the matter is remanded to the respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner and pass fresh orders on merits and in accordance with law on the applications filed by the petitioner under Section 84 of the TNVAT Act. The above direction shall be complied with within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

pbn

To

The Assistant Commissioner (CT),
Chithode Assessment Circle,
Erode.

+1cc to Mr.P.Rajkumar, Advocate, S.R.No.60249

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MV(CO)
CA(15/11/2016)