In the High Court of Judicature at Madras

Dated : 02.11.2016

Coram :

The Honourable Mr.Justice T.S.SIVAGNANAM

Writ Petition Nos.37901 to 37907 of 2016
& WMP.Nos.32476 to 32482 of 2016

S.Thangaraj, Proprietor,
M/s.APT Garments ...Petitioner in all WPS

Vs

The Assistant Commissioner (CT),
Avinashi Assessment Circle,
Avinashi-641654. ...Respondent in all WPS

PETITIONS under Article 226 of The Constitution of India praying for the issuance of Writs of Certiorari to call for the records relating to the impugned assessment orders dated 5.10.2016 passed in TIN : 33302306053/ 2009-10, TIN : 33302306053/2010-2011, TIN : 33302306053/2011-12, TIN: 33302306053/2012-13, TIN : 33302306053/2013-14, TIN : 33302306053/ 2014-15 and TIN : 33302306053/2015-16, on the file of the respondent herein and quash the same.

For Petitioner : Mr.K.Govi Ganesan

For Respondent : Mr.S.Kanmani Annamalai, AGP

COMMON ORDER

Mr.S.Kanmani Annamalai, learned Additional Government Pleader accepts notice for the respondent. Heard both. By consent, the writ petitions are taken up for joint disposal.

2. The petitioner, who is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006, has filed these writ petitions challenging the assessment orders for the years 2009-10 to 2015-16.

3. The facts leading to filing of these writ petitions are that a surprise inspection was conducted in the place of business of the petitioner by the officials of the Enforcement Wing on 26.7.2016 and during the course of such inspection, it appears that certain defects were noticed. This led to the issuance of a show cause notice dated 12.8.2016 pointing out the

defects, which were reported by the officials of the Enforcement Wing and the petitioner was called upon to show cause as to why the taxable turnover should not be revised.

4. On receipt of the notice, the petitioner submitted a representation on 22.9.2016 requesting for copies of documents, which were seized during the course of inspection on 26.7.2016. This was followed by another representation of the even date and it was sent by registered post. From the postal acknowledgment card, it is seen that the same has been received by the office of the respondent on 23.9.2016.

5. Immediately, the petitioner approached this Court by filing a writ petition in W.P.No.33686 of 2016 on 16.9.2016 for return of the cheques seized from the petitioner by the officials of the Enforcement Wing. The said writ petition was heard and disposed of by an order dated 26.9.2016 by referring to the earlier decisions wherein this Court held that the officials of the Enforcement Wing are not entitled to collect cheques from the assessees during the course of inspection as if it is a payment for advance tax. Accordingly, the said writ petition was disposed of to return the cheques within a stipulated time. A copy of the order dated 26.9.2016 was also communicated to the respondent and immediately thereafter, the impugned orders have been passed.

6. Though in the impugned assessment orders, there is a reference to the petitioner's representation dated 22.9.2016, there is no averment made to the effect that such a request was accepted. In the affidavits filed in support of the above writ petitions, the petitioner would state that at the time of submitting the representation, he met the respondent in person and the respondent, in principle, agreed to furnish copies of documents subject to the condition that the petitioner should pay the cost of making such copies. The impugned orders could have been passed only after affording an opportunity to the petitioner.

7. In the impugned orders, there is an observation that in spite of a lapse of 46 days, the petitioner has not submitted his reply to the show cause notice. However, one important fact, which was lost sight of by the respondent is that the petitioner made a request for furnishing of copies of documents, which were seized by the officials of the Enforcement Wing. Therefore, without furnishing the copies sought for by the petitioner, the respondent could not have taken a stand that the petitioner was guilty of not submitting a reply to the show cause notice. For the above reasons, this Court holds that the impugned orders have been passed in violation of the principles of natural justice, as the petitioner did not have an opportunity to put forth his submissions. This is sufficient to hold that the impugned orders are unsustainable in law.

8. In view of the above, the writ petitions are allowed, the impugned orders are set aside and the matters are remitted back to the respondent for fresh consideration. The respondent shall furnish copies of documents sought for by the petitioner, within a period of two weeks from the date of receipt of a copy of this order. After receiving copies, the petitioner shall submit their objections within 15 days therefrom and thereafter, an opportunity of personal hearing shall be afforded and the assessment shall be redone by the respondent in accordance with law. No costs. Consequently, the above WMPs are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

To

1. The Assistant Commissioner (CT),
Avinashi Assessment Circle, Avinashi-641654.

1 cc to Mr.K. Goviganesan, Advocate, sr. 62400

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KJI (CO)
kk 23/11