BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :23.06.2016

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD)Nos.11144 to 11148 of 2016
and
W.M.P.(MD)Nos.8566 to 8570 of 2016

D.Manoharan ..Petitioner in all petitions

vs.

1.The Commissioner of Commercial Taxes,
O/o the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercial Tax Officer,
Madurai (Rural) South Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020. ..Respondents in all petitions

PRAYER in W.P.(MD)No.11144 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795162676/2007-2008, dated 11.12.2015 and quash the same and consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

PRAYER in W.P.(MD)No.11145 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795162676/2008-2009, dated 11.12.2015 and quash the same and consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

PRAYER in W.P.(MD)No.11146 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795162676/2009-2010, dated 11.12.2015 and quash the same and consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

PRAYER in W.P.(MD)No.11147 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795162676/2010-2011, dated 11.12.2015 and quash the same and consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

PRAYER in W.P.(MD)No.11148 of 2016: Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned proceedings of the second respondent in TIN.33795162676/2011-2012, dated 20.01.2016 and quash the same and consequently, direct the second respondent to re-do the assessment afresh after giving adequate opportunity to the petitioner.

For Petitioner
in all petitions :Mr.R.Veeramanikandan
For Respondents
in all petitions : Mr.R.Karthikeyan
Additional Government Pleader

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COMMON ORDER

The petitioner has filed these writ petitions challenging the impugned proceedings issued by the Commercial Tax Officer, Madurai (Rural) South Assessment Circle, Madurai in TIN.33795162676/ 2007-2008, TIN.33795162676/2008-09, TIN.33795162676/2009-2010, TIN.33795162676/2010-11 and TIN.33795162676/2011-12, dated 11.12.2015 on the ground that the second respondent has wrongly passed an order, totally suppressing the letter dated 24.11.2015 seeking one month's time to file their objection/reply.

2. The learned Counsel appearing for the petitioner would submit that the petitioner is a Government Works Contractor and has registered on the file of the Commercial Tax Officer, Madurai (Rural) South Assessment Circle, Madurai with TIN.33795162676. It is also their claim that they have regularly filed the monthly returns under Tamilnadu Value Added Tax Act and also adjusting the Input Tax Credit on the tax paid on their purchases. In the meanwhile, pursuant to the audit conducted in their business premises on 23.03.3015 and 08.05.2015, the second respondent issued notice on 13.11.2015 complaining that they have not paid the purchase tax on the goods purchased from the unregistered dealers and consequently, their reported turnover was disproportionate to the contract amount received. On that basis, notice indicated that the second respondent proposed to levy purchase tax and thereby arrive tax due under Section 5 of the Tamil Nadu Value Added Tax Act and also proposed to levy penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act.

3. It is the case of the petitioner that on receipt of the said notice from the second respondent on 21.11.2015, the petitioner had filed an adjournment letter dated 24.11.2015 requesting the second respondent to grant them one month time to file their objection, since they had to file objection for five assessment years along with voluminous documentary evidences. But the second respondent, without even saying that they have granted time or refusing to grant time, passed the impugned order.

4. Adding further, the learned Counsel for the petitioner would submit that from the date of request letter seeking time 30 days, there was a gap of 20 days time, since the second respondent has not granted time. Since the petitioner was not granted 30 days time, he was not able to file his objection / reply. In the meantime, the impugned proceedings has been passed confirming the proposal.

5. Adding further, the learned Counsel for the petitioner would submit that when the second respondent has proposed to levy penalty under Section 27(3) of the Tamil Nadu Value Added Tax Act, he should have kept in mind that the law is well settled that reasonable opportunity should be given, but it was not granted to the petitioner and inspite of adjournment letter dated 24.11.2015 given by the petitioner, the impugned order has been passed and hence, he prayed that the petitioner may be given another chance, as they do not intend to prolong the case.

6. Mr.R.Karthikeyan, learned Additional Government Pleader appearing for the respondents would submit that after the issuance of notice dated 13.11.2015, the petitioner gave a request letter for adjournment for 30 days stating that they have to prepare an elaborate reply for five assessment years along with voluminous documentary evidences and therefore, two weeks' time was granted and even though, after expiry of two weeks' time, the sixth day, the impugned proceedings has been passed. Therefore, the petitioner cannot complain before this Court that his request for adjournment was refused.

7. As contended by the petitioner, when an adjournment letter dated 24.11.2015 requesting the second respondent to grant one month's time to file their objection was given, no doubt, two weeks' time has been granted. Since the petitioner asked for sufficient time to prepare reply for five assessment years along with voluminous documentary evidence, the second respondent could have rejected any more request for further time. In the meantime, the impugned order has been passed. Therefore, the petitioner is hereby granted only two weeks' time from the date of receipt of a copy of this order to file a reply along with all documentary evidence, in view of the fact that he has also enjoyed considerable time and on such filing, the second respondent shall also grant personal hearings and complete the entire exercise as expeditiously as possible.

8. In view of the above the impugned order is set aside and all the Writ Petitions are allowed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar(CS)
Madurai Bench of Madras High Court,
Madurai-23.

To
1.The Commissioner of Commercial Taxes,
O/o the Principal and Special Commissioner of Commercial Taxes,
Ezhilagam, Chepauk,
Chennai-600 005.

2.The Commercia Tax Officer,
Madurai (Rural) South Assessment Circle,
Commercial Taxes Complex,
Dr.Thangaraj Salai,
Madurai-625 020.

+1cc to M/s.R.Rooban, Advocate in SR.32528
+1cc to the Special Government Pleader, in SR.32595

W.P(MD)Nos.11144 to 11148 of 2016
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