BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 26.08.2016
C O R A M
THE HONOURABLE MR.JUSTICE T.RAJA
W.P(MD)Nos.15928, 15929, 15930 & 15931 of 2016
and
W.M.P(MD)Nos.11664, 11665, 11666 & 11667 of 2016

1.W.P(MD)No.15928 of 2016:-

Tvl.Sri Mahalakshmi Ceramics,
Rep. By its Proprietrix,
S.Meenal. .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN No.33334982412/2010-11, dated 15.07.2016 and quash the same.

2.W.P(MD)No.15929 of 2016:-

Tvl.Sri Mahalakshmi Ceramics,
Rep. By its Proprietrix,
S.Meenal. .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN: 33334982412/2011-12, dated 15.07.2016 and quash the same.

3.W.P(MD)No.15930 of 2016:-

Tvl.Sri Mahalakshmi Ceramics,
Rep. By its Proprietrix,
S.Meenal. .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN: 33334982412/2012-13, dated 15.07.2016 and quash the same.

4.W.P(MD)No.15931 of 2016:-

Tvl.Sri Mahalakshmi Ceramics,
Rep. By its Proprietrix,
S.Meenal. .. Petitioner

Vs.

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Complex,
Dr.Thangaraj Salai,
Madurai - 625 020. .. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN: 33334982412/2013-14, dated 15.07.2016 and quash the same.

For Petitioner : Mr.R.Veeramanikandan
(in all W.P's)

For Respondents : Mr.R.Karthikeyan
(in all W.P's) Additional Government Pleader

COMMON ORDER

These Writ Petitions have been filed for the issuance of a Writ of Certiorari, calling for records pertaining to the impugned proceedings of the second respondent in TIN Nos.33334982412/2010-11, 2011-12, 2012-13 and 2013-14, dated 15.07.2016 and to quash the same.

2.Heard the learned counsel appearing for the petitioner and Mr.R.Karthikeyan, learned Additional Government Pleader, who has taken notice for the respondents.

3.Challenging the impugned proceedings of the Assistant Commissioner (CT), Nethaji Road Assessment Circle, Commercial Tax Complex, Dr.Thangaraj Salai, Madurai, in TIN No.33334982412/2010-11 dated 15.07.2016, *inter alia* stating that the second respondent herein without conducting any enquiry and refused to grant an opportunity of personal hearing, inspite of a specific request made by the Assessee. It is also the further claim of the petitioner that when the petitioner concern is registered on the file of the second respondent with TIN No.33334982412, they have been promptly paying the tax dues to the Input Tax Credit available on the tax paid on their purchasers. Even during the Assessment Year 2010-11 the petitioner has reported the total and taxable turnover through returns and paid the corresponding tax dues to the Department and adjusting the Input Tax Credit available to them. It is deemed that the second respondent has passed the Deemed Assessment Order on 30.06.2012, by accepting the returns under Section 22(2) of the Tamil Nadu Value Added Tax Act. While so, the second respondent issued a notice, dated 29.10.2013, alleging that the petitioner had purchased goods from one Tvl.Terrastone Tiles of Coimbatore to the tune of Rs.3,71,060/- and the registration of the said dealer was cancelled with effect from 26.03.2008 and thereby proposed to reverse the Input Tax Credit claimed and availed by the petitioner on the tax paid on the said purchase and also proposed to levy penalty. On receipt of the said notice, dated 29.10.2013, the petitioner submitted a common reply dated 25.12.2013 for the Assessment Year 2010-11 to the second respondent explaining that they have effected purchase from the said dealer through valid tax invoice as prescribed under the TNVAT Act and the registration/TIN of the said dealer was not cancelled. It is also further stated that the Registration of the TIN numbers are kept alive. But the second respondent, even after receipt of the detailed reply, without even referring to any of the points raised by the petitioner, had erroneously passed the impugned order.

4.The contention of the learned counsel for the petitioner before me shows that the impugned order is challenged only on the limited ground that when there was a specific prayer made in the reply, dated 26.11.2015, denying the allegations of the second respondent and along with the copies of the documents, in support of their contention and requested for personal hearing, the second respondent passed the impugned order, dated 15.07.2016 and that the petitioner should have been given a reasonable opportunity to explain the case. The respondents cannot outrightly reject his case.

5.In the present case, it is pleaded that the reply, dated 26.11.2015 repeatedly sought for an opportunity of personal hearing to explain the above facts with material evidences in an effective manner. But, this has not been properly considered and no prejudice whatever would be caused to the respondents if there be a personal hearing given to the petitioner, it is pleaded.

6.Similar Writ Petitions have been filed by the Petitioner in W.P(MD)Nos.15929, 15930 and 15931 of 2016 for the Assessment Years 2011-12, 2012-13 and 2013-14 with similar set of facts praying for the similar relief.

7.The learned Additional Government Pleader appearing for the respondents would submit that in the present case, as alleged by the petitioner, after receipt of the notice, dated 14.10.2015, inviting the petitioner to give reply or objection as to why the proposal should not be confirmed, no doubt, a detailed reply was given on 26.11.2015, pursuant thereto, the Manager of the petitioner concerned was also present. Only after hearing elaborately, the impugned order has been passed and that the same has not been reflected in the impugned order.

8.Had it been the case of the respondents that the second respondent has heard the Manager or any representative from the petitioner's concern, he could have mentioned at-least in one line. But the impugned order does not deal with the persons of any representative of the petitioner at the time of passing the impugned order. Therefore, it has to be construed that no opportunity of personal hearing has been granted, as prayed for by the petitioner, in terms of Section 27(3) of the TNVAT Act. The Assessing Officer has no other option except to comply with the said request, as per Section 27(3) of the TNVAT Act and therefore, the impugned order is set aside and the matter is remitted back to the second respondent for fresh consideration, to decide the matter on merits and in accordance with law. Accordingly, these Writ Petitions are allowed. Needless to mention that the second respondent shall redo the exercise, after giving personal hearing to the petitioner and it is open to the petitioner to raise all the legal points before the second respondent at the time of personal hearing. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/
Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar

To

1.The Commissioner of Commercial Taxes,

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

2.The Assistant Commissioner (CT),
Nethaji Road Assessment Circle,
Commercial Tax Complex,Dr.Thangaraj Salai,
Madurai - 625 020.

+1cc to Special Government Pleader in SR.No.47710
+1cc to M/S.B.Rooban, Advocate in SR.No.47510

W.P(MD)Nos.15928, 15929,
15930 & 15931 of 2016 and
W.M.P(MD)Nos.11664, 11665,
11666 & 11667 of 2016
26.08.2016

ps
PA/AAL-MPA/29.09.2016/5P/5C