IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2017

Coram

The Hon'ble Mr.Justice T.S.Sivagnanam

Writ Petition Nos. 6655 to 6660 of 2017
and
W.P.M.P.Nos. 7171 to 7176 of 2017

W.P.No.6655 of 2017
Popular Vehicles and Services Pvt. Limited,
Representation by its Managing Director,
John K.Paul
Block J-16, Third Avenue,
Anna Nagar, (East) Chennai-102. ...Petitioners in all ps

Vs.

The Assistant Commissioner (CT)\
Amaindakarai Assessment Circle,
F-15, First Avenue, Anna Nagar East,
Chennai-102. ... Respondent in all Wps

Common Prayer:

Writ Petition, filed under Article 226 of the Constitution of India, for issuance of Writ of Certiorari, call for the records of the respondent in TIN 33141023995/2010-11,2011-2012, 2012-13,2013-14,2014-15,2015-16 dated 10.02.2017 and quash the same.

For Petitioner : Mr.R.Kumar in all Wps

For Respondent : Mr.K.Venkatesh
Government Advocate in all Wps

COMMON O R D E R

Heard Mr.R.Kumar, the learned counsel appearing for the petitioner and Mr.K.Venkatesh, the learned Government Advocate for the respondent. With consent on either side, these Writ Petitions are taken up for final disposal.

2. The petitioner is a dealer in automobiles vehicles, having registered Office at Kerala. They are also registered dealer, under the provisions of the Tamil Nadu Value Added Tax, Act 2006 (hereinafter, referred to as 'the Act') on the file of the respondent. The petitioner is aggrieved by the impugned assessment orders, dated 10.02.2017, for the assessment years 2010-11, 2011-12, 2012-13, 2013-14, 2014-15 and 2015-16.

3. It appears that the Enforcement Officials conducted surprise inspection in the place of business of the petitioner, for a considerable length of time, and collected sufficient records, based on which, the respondent/Assessing Officer had issued notice, dated 21.10.2016. On receipt of the said notice, the petitioner submitted a letter to the respondent/Assessing Officer, dated 21.12.2016, stating that the Authorized Signatory of the petitioner is not available to attend the personal hearing, and that, the Enforcement Officials, who had conducted inspection in the business premises of the petitioner, have been furnished with documents, as called for, and they have also recorded statement on 25.07.2016, in which, the petitioner has filed a reply, which was also been recorded, and the petitioner undertook to produce the same set of records before the respondent/Assessing Officer along with objections, and requested for 15 days' time. The petitioner's specific case is that, they went along with letter, dated 21.12.2016, requesting 15 days time, whereas, the respondent/Assessing Officer recorded statement, as if, they attended the personal hearing and proceeded to complete the assessment holding that the petitioner had not produced any documentary evidence in support of their contention.

4. On a reading of the impugned assessment orders, it is seen that, except, for the last para, all other paragraphs are verbatim repetition of the report of the Enforcement Officials. Admittedly, the surprise inspection was conducted on 25.07.2016; show cause notice was issued to the petitioner on 21.10.2016; subsequently, personal hearing was fixed on 21.12.2016, and the same was intimated to the petitioner, by notice, dated 21.12.2016. Considering the fact that inspection took place for

considerable length of time, the respondent/Assessing Officer should have granted reasonable time to the petitioner to produce records, especially, when the petitioner has specifically stated that they requested for 15 days' time to produce records and submit their objections.

5. Thus, this Court is of the view that there has been serious violation of principles of natural justice. On a reading of the counter affidavit filed by the respondent, it is seen that the specific averments raised by the petitioner that, they requested for time to produce records and submit their objections, but, it was recorded, as if, the petitioner had attended the personal hearing, has not been specifically denied in the counter affidavit, nor have been dealt with in the counter affidavit. This is sufficient to hold that the impugned orders are in violation of principles of natural justice. This Court is inclined to interfere in the impugned orders.

6. Accordingly, the Writ Petitions allowed, the impugned orders are set aside, and the matters are remanded to the respondent/Assessing Officer for fresh consideration. The petitioner is directed to submit their objections along with supportive documents within a period of 15 days from the date of receipt of a copy of this order. On receipt of the same, the respondent shall afford an opportunity of personal hearing to the petitioner, and go through the documents produced and redo the assessment in accordance with law.

7. At the time, when the Writ Petitions were entertained, interim direction was issued, directing the petitioner to pay 15% of the tax demanded. This interim order has been complied with by the petitioner. Therefore, the said 15% of the tax paid by the petitioner shall remain as such and abide by the fresh assessment orders to be passed by the respondent/Assessing Officer in terms of the direction passed supra. No costs. Consequently, connected Writ Miscellaneous Petition are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

sd

To

The Assistant Commissioner (CT)\
Amaindakarai Assessment Circle,
F-15, First Avenue, Anna Nagar East,
Chennai-102.

+1cc to M/s.R.Kumar,Advocate for the petitioner S.R.No.46343
+1cc to Special Government Pleader (Taxes),S.R.No.46495 for Respondent

Writ Petition Nos. 6655 to 6660 of 2017

KJ(CO)
CU(02/08/2017)