IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.Nos.7853 to 7855 of 2017 &
W.M.Nos.8576 to 8578 of 2017

M/s.Sun Blue, Rep. By its Partner,
Mr.S.K.Sabapathy, No.32/1,
Musiri Village, Walajah Taluk, Vellore.
... Petitioner in all WPs.

Vs.

1. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Fort Round Road, Vellore.

2. The Assistant Commissioner (CT),
   Ranipet Assessment Circle.

... Respondents in all WPs.

Prayer in W.P.No.7853 of 2017: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for records of the first respondent in his proceedings in Appeal No. & year 580/14 (VAT), quash the order dated 15.02.2017 passed therein and further direct the first respondent to pass a speaking order on merits and in accordance with law.

Prayer in W.P.No.7854 of 2017: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for records of the first respondent in his proceedings in Appeal No. & year 585/14 (VAT), quash the order dated 15.02.2017 passed therein and further direct the first respondent to pass a speaking order on merits and in accordance with law.

Prayer in W.P.No.7855 of 2017: Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for records of the first respondent in his proceedings in Appeal No. & year 96/15 (VAT), quash the order dated 16.02.2017 passed therein and further direct the first respondent to pass a speaking order on merits and in accordance with law.

For Petitioner (in all WPs.)	:	Mr.P.Rajkumar
For Respondents (in all WPs.)	:	Mr.S.Kanmani Annamalai, Additional Government Pleader.

C O M M O N   O R D E R

Heard Mr.P.Rajkumar, learned counsel for the petitioner and Mr.S.Kanmani Annamalai, learned Additional Government Pleader for the respondents. With the consent on either side, the writ petitions themselves are taken up for final disposal.

2.The petitioner, who is a registered dealer on the file of the second respondent under the provisions of the Tamil Nadu Value Added Tax Act, 2006 (TNVAT Act), has filed these writ petitions challenging the orders passed by the first respondent, the Appellate Deputy Commissioner (CT) Vellore, dated 15.02.2017 in respect of three appeals filed by the petitioner as against the orders of assessment for the years 2010-11, 2011-12 and 2012-13.

3.The impugned order has been challenged mainly on two grounds:

i) Firstly, on the ground that the Appellate Authority afforded an opportunity of personal hearing and heard the counsel appearing for the petitioner on 15.06.2016, however, she did not pass any orders and after about eight months passed an order, as if the personal hearing was granted on 10.02.2017.

ii)The second ground of challenge is that the order is a non-speaking order. This contention was recorded by this Court and an interim protection was granted to the petitioner, by order dated 04.04.2017 and the matter has been adjourned on four occasions, so that the first respondent can file a counter. However, till date counter affidavit has not been filed and the learned Additional Government Pleader on instructions from the first respondent made submissions.

4. After hearing the learned counsels for the parties, and perusing the materials placed on record, it is evidently clear that the impugned order is an outcome of total non application of mind, as the first respondent has extracted the grounds of appeals submitted by the petitioner and without discussing any of the issues raised, dismissed the appeals by a non-speaking order. This is sufficient to set aside the impugned order. Further, the other contention raised by the petitioner also stands substantiated, since there is no record to show that the

first respondent heard the petitioner's counsel on 10.02.2017, but the hearing was conducted only on 15.06.2016. In the absence of any record to substantiate that the hearing was on 10.02.2017, this Court took serious note of the same, as it appears to be a false statement made in the impugned proceedings. I am informed that the first respondent is a senior officer in the Department having put in more than ten years of service. If such is the case, then such an error should not have been committed by such an officer, that too, when the Officer is an Appellate Authority.

5.Thus, the second ground raised by the petitioner having been established, the impugned orders require to be set aside. Accordingly, the writ petitions are allowed, the impugned orders are set aside and the matter is remanded to the first respondent for fresh consideration, who shall afford an opportunity of personal hearing to the petitioner or by authorised representative, hear the party in full, considered all the grounds raised and pass a speaking order on merits and in accordance with law uninfluenced by the finding rendered by her in the impugned orders which have been quashed.

6.With the above directions, the writ petitions are allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VI)

/true copy/

Sub Asst. Registrar

abr/pbn

To

1. The Appellate Deputy Commissioner (CT),
   Commercial Taxes Building,
   Fort Round Road, Vellore.

2. The Assistant Commissioner (CT),
   Ranipet Assessment Circle.

+1cc to the Special Government Pleader (Taxes), Sr. 49449
+1cc to Mr.P.Rajkumar, Advocate Sr. 49021

W.P.Nos.7853 to 7855 of 2017

SJ(CO)
VR(11/8/2017)