IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HONOURABLE Mr. JUSTICE T.S.SIVAGNANAM

W.P.Nos.30927 to 30935 of 2017
and W.M.P.Nos.33839 to 33845 of 2017

W.P.No.30927 of 2017

JBM Auto System Private Limited,
Represented by its Asst. General Manager,
V.Vasudevan,
No.1, Ford Suppliers Park,
Singaperumal Koil - 603 204
Kancheepuram District. .. Petitioner in all the petitions

..Vs..

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
Chengalpattu - 603 001. .. Respondent in all the petitions

Prayer in WP.30927 of 2017: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records on the files of the respondent herein in TIN:33671602648/2011-12 dated 17.02.2017, quash the same.

Prayer in WP.30928 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this court may be pleased to issue a writ of Mandamus,directing the Respondent herein to revise the assessments in TIN: 33671602648/ 2011 - 12 dated 21.07.2017 reiterating the proceedings in TIN:33671602648/ 2011 - 12 dated 17.02.2017 after accepting the Industrial Input Certificates filed by the petitioners along with the application dated 17.03.2017 as reiterated on 24.11.2017.

Prayer in WP.30929 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this court may be pleased to issue a writ of Mandamus, directing the Respondent herein to revise the assessments in TIN: 33671602648/ 2012 - 13 dated 21.07.2017 reiterating the proceedings in TIN:33671602648/ 2012 - 13 dated 17.02.2017 after accepting the Industrial Input Certificates filed by the petitioners along with the application dated 24.03.2017 as reiterated on 24.11.2017

Prayer in WP.30930 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this court may be pleased to issue a writ of Mandamus, directing the Respondent herein to revise the assessments in TIN: 33671602648/ 2013 - 14 dated 21.07.2017 reiterating the proceedings in TIN:33671602648/ 2013 - 14 dated 17.02.2017 after accepting the Industrial Input Certificates filed by the petitioners along with the application dated 10.10.2017 as reiterated on 22.11.2017 and 24.11.2017.

Prayer in WP.30931 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this Court may be pleased to issue a writ of certiorari, calling for the records on the files of the Respondent herein in TIN: 33671602648/ 2011 - 12 dated 21.07.2017 quashing the same.

Prayer in WP.30932 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this Court may be pleased to issue a writ of certiorari,calling for the records on the files of the Respondent herein in TIN: 33671602648/ 2012 - 13 dated 17.02.2017 quashing the same.

Prayer in WP.30933 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this Court may be pleased to issue a writ of certiorari,calling for the records on the files of the Respondent herein in TIN: 33671602648/ 2012 - 13 dated 21.07.2017 quashing the same.

Prayer in WP.30934 of 2017: This writ petiton filed under Article 226 of the constitution of India praying this Court may be pleased to issue a writ of certiorari, calling for the records on the files of the Respondent herein in TIN: 33671602648/ 2013 - 14 dated 17.02.2017 quashing the same.

Prayer in WP.30935 of 2017:This writ petiton filed under Article 226 of the constitution of India praying this Court may be pleased to issue a writ of certiorari, calling for the records on the files of the Respondent herein in TIN: 33671602648/ 2013 - 14 dated 21.07.2017 quashing the same.

For Petitioner
in all W.Ps. : Mr.N.Prasad

For Respondent
in all W.Ps. : Mrs.Narmadha Sampath
Special Government Pleader

COMMON ORDER

Heard Mr.N.Prasad, learned counsel appearing for the petitioner and Mrs.Narmadha Sampath, learned Special Government Pleader appearing for the respondent. With the consent on either side, the writ petitions are taken up for disposal. One more reason for not keeping the writ petitions pending and awaiting counter affidavit is on account of the glaring error which is apparent on the face of the impugned assessment orders.

2.The petitioner is a registered dealer on the file of the respondent under the provisions of the Tamil Nadu Value Added Tax Act (TNVAT Act) and the Central Sales Tax Act (CST Act) and they have filed these writ petitions for the following reliefs:

W.P.Nos.30927, 30931 to 30935 of 2017 have been filed to quash the assessment orders for the years 2011-2012, 2012-2013 and 2013-2014 under the TNVAT Act. The reason for filing six writ petitions for three assessment years is on account of the two assessment orders passed for each years dated 17.02.2017 and 21.07.2017 respectively. In the remaining three writ petitions, viz., W.P.Nos.30928 to 30930 of 2017, the petitioner seeks for issuance of writ of Mandamus, to direct the respondent to revise the assessment dated 21.07.2017, to consider the Industrial Input Certificates and other documents, afford an opportunity of personal hearing and pass orders.

3.I have carefully considered the submissions made on either side and perused the materials placed on record.

4.One admitted fact is that the petitioner did not submit their objections to the pre-revision notices dated 27.07.2015, 30.12.2015 and 30.12.2016. In the notices, the respondent had stated that if the petitioner is desirous to appear in person, he can appear before her on any working day at 11.00 a.m. In fact this Court has held that it may not be proper on the part of the Assessing Officer to make such observation regarding personal hearing. This is so because on objections being filed, there may be cases that when the Assessing Officer is satisfied with the objections and even may drop the proposal. Therefore, the opportunity of personal hearing should be fixed after the objections are received as that alone will serve the meaning purpose.

5.Be that as it may. The petitioner has neither filed their objections to the pre-revision notices nor appeared before the Assessing Officer and therefore, the respondent confirmed the proposal in the pre-revision notices and passed the assessment orders dated 17.02.2017. After the orders were passed, the petitioner woke up and approached the authorities and stated to have filed the original Industrial Input Certificates in several box files for all the three assessment years. On receipt of the documents, it appears that the respondent was of the opinion that an opportunity should be granted to the petitioner and accordingly issued summons in Form PP dated 12.06.2017. The Law Officer of the petitioner is stated to have appeared before the Assessing Officer. Thus, one can reasonably presume that once summons has been issued to the dealer to appear and produce documents, the authority would consider the documents and pass an order. Unfortunately, the respondent has completed the assessment and passed assessment orders dated 21.07.2017. On a comparison with the earlier assessment orders dated 17.02.2017 with the assessment orders dated 21.07.2017, it is seen that it is a verbatim replica of the earlier assessment orders. Thus, the respondent has abdicated her statutory powers in a capacity of an Assessing Officer. The impugned assessment orders are clear examples as to how the assessment should not be completed, especially when summons in Form PP was issued to the dealer. There is no reference to the effect of the document produced by the petitioner which are stated to have submitted in 20 box files. Even after the impugned assessment orders were passed, the petitioner appeared before the respondent and filed copies of the industrial input certificates for all the three assessment orders on 10.10.2017, 22.11.2017 and 24.11.2017. However, nothing happened thereafter and therefore, the petitioner is before this Court.

6.The facts mentioned above would clearly show that the impugned assessment orders dated 21.07.2017 is clearly unsustainable. However, considering the volume of the turnover, this Court is inclined to direct the Assessing Officer to complete the assessment in a proper manner so that appropriate rate of tax should be recovered from the petitioner, if recoverable.

7.In the light of the above, the writ petitions, viz., W.P.Nos.30927, 30931 to 30935 of 2017 are partly allowed and the assessment orders dated 21.07.2017 are set aside. The petitioner is directed to treat the assessment orders dated 17.02.2017 as show cause notice and submit their comprehensive objections within a period of fifteen days from the date of receipt of a copy of this order. On receipt of the objections, the respondent shall fix the date for personal hearing, peruse all the documents already submitted and if any doubt arises in the assessment proceedings, clarification should be obtained and fresh speaking assessment orders to be passed on merits and in accordance with law. In the light of the above, W.P.Nos.30928 to 30930 of 2017 are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

cse

To

The Assistant Commissioner (CT),
Chengalpattu Assessment Circle,
Chengalpattu - 603 001.

+ 1 cc to M/s. N. Inbarajan, Advocate SR.85149
+ 1 cc to Mr. the Special Government Pleader SR.85659

W.P.Nos.30927 to 30935 of 2017
and W.M.P.Nos.33839 to 33845 of 2017

GMI(CO)
EU(20/12/2017)